DOCUMENT RESUME

ED 301 201 IR 052 544

AUTHOR	Wren, Christopher G.; Wren, Jill Robinson
TITLE	The Teaching of Legal Research.
PUB DATE	88
NOTE	60p.
AVAILABLE FROM	Adams & Ambrose Publishing, 1274 South Park St., Suite 8000, P.O. Box 9684, Madison, WI 53715 ($3.00).
PUB TYPE	Journal Articles (080) -- Viewpoints (120)
JOURNAL CIT	Law Library Journal; v80 n1 p8-61 Win 1988
EDRS PRICE	MF01/PC03 Plus Postage.
DESCRIPTORS	Academic Libraries; Curriculum Development; Graduate Students; Higher Education; History; *Law Libraries; *Law Schools; *Legal Education (Professions); *Library Instruction; *Process Education; *Research Skills
IDENTIFIERS	*Self Sufficiency

ABSTRACT

Arguing that the typical legal bibliographic course is a "curricular anomaly" which emphasizes the characteristics of law books, this article advocates a fundamental shift away from the bibliographic orientation to an emphasis on the research process, i.e., how researchers use the books. The discussion examines the drawbacks inherent in a bibliographic teaching approach and explores how, despite these drawbacks, the bibliographic orientation came to dominate legal research instruction. Legal research is defined as a series of steps in the course of which a researcher develops a comprehensive strategy for selecting appropriate resources that may yield a solution to a legal problem, and a teaching approach that emphasizes this process is proposed as a means of overcoming the drawbacks of bibliographically oriented instruction. The benefits of shedding the bibliographic orientation for both teachers and students are explained, and it is argued that this approach would align the legal research course with other law school courses and move it into the curricular mainstream. (CGD)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED301201

IR

IR053744

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

This document has been reproduced as received from the person or organization originating it.

Minor changes have been made to improve reproduction quality.

Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Christopher Wren

Jill Wren

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

LAW LIBRARY JOURNAL

"The Teaching of Legal Research"

by Christopher G. Wren and Jill Robinson Wren

Reprinted from Law Library Journal with permission of the copyright holders. All rights reserved. Distributed by Adams & Ambrose Publishing, 1274 South Park St., P.O. Box 9684, Madison, Wisconsin 53715 (Telephone 608/257-5700).

AMERICAN ASSOCIATION OF LAW LIBRARIES

Vol. 80, No. 1 Winter 1988

BEST COPY AVAILABLE

THE CONGRESSIONAL IMPEACHMENT PROCESS AND THE JUDICIARY:

Documents and Materials on the Removal of Federal District Judge Harry E. Claiborne

BY: BERNARD D. REAMS & CAROL J. GRAY

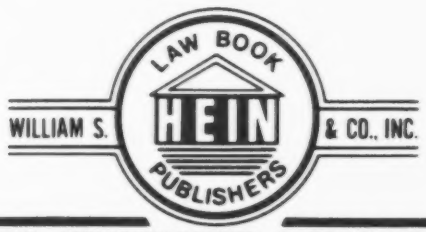
6 Volumes Over 4,500 Pages

$325.00

1987

This collection of materials includes various federal court reports on the Claiborne appeal process, impeachment documents before the House and Senate, and the report of a twelve-member special Senate committee. These volumes include all significant material considered by Congress in its deliberations and by the Senate in its trial. This set of seventy-one documents includes briefs, notations, petitions, and forms unique to the impeachment process. Many are not available in any other source.

This material is significant not only for its contemporary relevance and historical interest but also because other impeachment trials are likely to be held in the next Congress. The precedent represented in these volumes will be a research source required by legal practitioners and scholars both now and in the future.



HEIN BUILDING • 1285 MAIN STREET • BUFFALO, NEW YORK 14209

716/882-2600 Toll Free 800/828-7571 Manhattan 212/283-3528

Write for a free copy of our catalog: It is also a reference tool.

The Teaching of Legal Research*

Christopher G. Wren**
and
Jill Robinson Wren***

The authors assert that the typical legal bibliography course is a curricular anomaly not designed to teach legal research. They analyze the flaws of conventional legal bibliography instruction, describe the structure of a course for teaching legal research, and explain how the course benefits students and teachers.

Table of Contents

I. Introduction: An Overview 8
II. The Problem with Teaching Legal Bibliography Instead of Legal Research 10
III. Overcoming "Bibliocentrism" 18
IV. Explaining the Dominance of Legal Bibliography: The Quirks of History 26
V. The Teaching of Legal Research: Frameworks for Process-Oriented Instruction 33
A. Framework 1: Legal System Orientation 34
B. Framework 2: Assessing the Research Problem 36

---

* ©Christopher G. Wren and Jill Robinson Wren, 1988. Portions of this article are adapted from the authors' remarks delivered at the 79th Annual Meeting of the American Association of Law Libraries, Washington, D.C., July 7, 1986. In writing this article, we have benefitted from the comments of numerous law teachers, law librarians, law students, and practicing attorneys who have discussed with us many of the ideas we have written about. Regrettably, space limitations preclude our acknowledging all these individuals by name. We wish to expressly thank the following people, however, for providing diverse and insightful commentary on the manuscript: William W. Berry, Esquire; Neil A. Campbell, Chief Provincial Court Librarian, Alberta, Canada, and Adjunct Professor of Legal Research and Writing at the University of Alberta; Barbara J. Cox, Assistant Professor of Law and Director of Legal Skills at California Western School of Law; Jill J. Ramsfield, Instructor of Legal Research and Writing at Georgetown University Law Center.

** Assistant Attorney General, Criminal Appeals Unit, Wisconsin Department of Justice, Madison, Wisconsin.

*** Legal Affairs Editor, Adams & Ambrose Publishing, Madison, Wisconsin.

C. Framework 3: The Library Phase of Legal Research 42
D. Summarizing the Frameworks 48
VI. Benefits of Process-Oriented Instruction 49
A. The Students' Perspective 50
B. The Teachers' Perspective 58
VII. Conclusion 60

I. Introduction: An Overview

A curious, ironic, and counterproductive thing happened as legal research instruction evolved in American law schools: although legal research is a process, instruction about the process all but disappeared from the curriculum. As the movement to transfer legal training from the law office apprenticeship to the law school gained momentum in the late 1800s and early 1900s,[1] the earliest advocates of adding legal research courses to the law school curriculum envisioned courses that would teach legal research as a process for seeking solutions to legal problems.[2] Yet, from the time legal research courses first appeared as formal offerings in the law school curriculum more than seventy years ago,[3] traditional legal research instruction has focused exclusively or almost exclusively on describing law books.[4]

This descriptive, or bibliographic, approach virtually ignores the legal research process itself[5]—that is, the process through which researchers decide how and when to draw on law books in developing comprehensive

1. For an account of the transition, see R. STEVENS, LAW SCHOOL 20-130, 172-76 (1983). *See also* Foote, *The Need for College Instruction in the Use of Law Books*, 10 LAW LIBR. J. 25, 25 (1917); Huffmann, *Is the Law Graduate Prepared to Do Research?*, 26 J. LEGAL EDUC. 520, 521 (1974); Sadow & Beede, *Library Instruction in American Law Schools*, 68 LAW LIBR. J. 27, 27-28 (1975).

2. *See infra* note 53 and accompanying text.

3. For discussions of the history of legal research courses, see Hicks, *The Teaching of Legal Bibliography*, 11 LAW LIBR. J. 1, 5-7 (1918); Mills, *Legal Research Instruction in Law Schools, the State of the Art or, Why Law School Graduates Do Not Know How to Find the Law*, 70 LAW LIBR. J. 343, 343-44 (1977); Morse, *Research, Writing, and Advocacy in the Law School Curriculum*, 75 LAW LIBR. J. 232, 253-54 (1982).

4. Throughout this article, we use "books" as a shorthand term for all forms of storing information, *e.g.*, books, periodicals, computer data bases, microforms, CD-ROM.

5. Although bibliographically oriented legal research courses vary in the details of what they teach, the bibliographic approach remains consistent in its emphasis on having students survey law books. *See infra* note 40 and accompanying text. The approach is the same as that found in bibliographically oriented textbooks, *i.e.*, the instruction is organized according to types of law books, not according to the steps in legal research. *See, e.g.*, M. COHEN & R. BERRING, HOW TO FIND THE LAW (8th ed. 1983); J. JACOBSTEIN & R. MERSKY, FUNDAMENTALS OF LEGAL RESEARCH (1987 ed.); C. KUNZ, D. SCHMEDEMANN, C. ERLINDER, M. DOWNS, C. GREENE, A. BATESON & K. MILLARD, THE PROCESS OF LEGAL RESEARCH (1986) (hereinafter THE PROCESS OF LEGAL RESEARCH).

strategies for researching legal problems.[6] Throughout the period the bibliographic emphasis has prevailed in legal research instruction, law students, law professors, librarians, and employers have lamented the inadequacy of students' and recent graduates' research skills.[7]

Bibliographically oriented instruction fails to teach legal research[8] because its book-focused approach conveys to students the inaccurate message that legal research amounts to knowing the bibliographic characteristics of law books. Our experience has shown us that legal research instruction should not, and need not, be taught this way. Instead, because legal research is a process, instruction should focus directly on the process; this approach demonstrates to students that research consists of a series of problem-solving steps. Process-oriented instruction, by presenting information about law books as part of a comprehensive explanation of the research process, not only gives students as much bibliographic information as they need, but inherently emphasizes that law books are simply tools to use in solving legal problems.[9] Through this kind of instruction, students learn that law books are a means to an end, not (as the structure of a bibliographic teaching approach implies) the end itself. Most importantly, process-oriented instruction equips students to actually do legal research.

This article advocates a fundamental shift away from the bibliographic orientation to an emphasis on the research process. The discussion examines the drawbacks inherent in a bibliographic teaching approach and explores how, despite these drawbacks, the bibliographic orientation came to dominate legal research instruction. The article also explains how the drawbacks of bibliographically oriented instruction can be overcome by using a teaching approach that tracks the way legal research is done. Finally, the article explains how shedding the bibliographic orientation can yield benefits to teachers as well as students, and align the legal research course with other law school courses, thus moving it into the curricular mainstream.[10]

---

6. *Cf.* Barkan, *On Describing Legal Research* (Book Review), 80 MICH. L. REV. 925, 925 n.2 (1982) ("The process of legal research, then, should be distinguished from the concept of legal bibliography, which is the description and identification of the published sources of the law.").

7. *See infra* note 26.

8. *See infra* note 149.

9. *Cf.* Morse, *supra* note 3, at 258 ("[L]aw students do not use the law library out of deep-set reverence for the reporter or the digest as did [Columbia University law librarian Frederick] Hicks or [Harvard Law School Dean Christopher] Langdell. The books are merely tools for analysis, synthesis, and problem solving.").

10. The first-year course on legal research has been described as a curricular "orphan," Achtenberg, *Legal Writing and Research: The Neglected Orphan of the First Year*, 29 U. MIAMI L. REV. 218, 218 (1975), and as "the problem stepchild in the curriculum family," *The Teaching of Legal*

The views expressed here have evolved from our experience teaching and lecturing about legal research, from our experience as authors of a legal research textbook,[11] and from our experience as practicing attorneys routinely engaged in legal research, writing, and analysis. We hope this article will contribute usefully to the development of legal research courses that significantly reduce the gap between the level of legal research skills students acquire in the academic environment and the level of legal research skills they will need to research effectively as lawyers.

II. The Problem with Teaching Legal Bibliography Instead of Legal Research

As already noted, legal research is a process.[12] This axiom should not need reiteration, but the point bears repeating because, while often overlooked, it lies at the heart of any improvement of legal research instruction. Too often, students in legal research courses are given descriptions of law books without adequate instruction about how or when to use the books. Bibliographic information requires a context to make it meaningful for a legal researcher, and the necessary context is how someone actually does legal research. Descriptions of law books do not provide this orientation. Certainly, if acquiring bibliographic knowledge were a productive way to learn how to do legal research, law students could attend library science schools for this aspect of their education.[13]

The inadequacies of teaching legal research with a bibliographic orientation flow from the method's principal deficiency: the previously noted core failure of the bibliographic orientation to explain how to use law books to solve legal problems. At most, a bibliographically oriented explanation covers the mechanics of moving around within a discrete law book or within related sets of law books. For example, students may learn

---

Writing and Legal Research—A Panel, 52 LAW LIBR. J. 350, 354 (1959) (remarks of Dr. Sheldon D. Elliott) (hereinafter *Teaching Legal Writing*).

11. C. WREN & J. WREN, THE LEGAL RESEARCH MANUAL: A GAME PLAN FOR LEGAL RESEARCH AND ANALYSIS (2d ed. 1986).

12. Legal research consists of a series of steps by which someone attempts to solve a legal problem. These steps are gathering and analyzing the facts of the research problem; identifying the legal issues the facts raise; organizing the issues for effective research; and finding, reading (*i.e.* evaluating), and updating the law.

This process remains the same regardless of the information storage medium—*e.g.*, a book or a computer—researchers use. The computer's technological characteristics require the use of a specialized syntax (including proximity connectors, root expanders, and so forth) for retrieving information from the computer's storage devices. Nonetheless, researchers still seek answers to legal problems by going through the same steps involved in noncomputerized research, *i.e.*, analyzing research problems and then finding, reading, and updating the relevant law.

13. *Cf.* Morse, *supra* note 3, at 256 ("[The traditional bibliographic teaching] approach has been more suitable to the fledgling law librarian, not the fledgling law student.").

that headnote numbers in a specific case in a case reporter operate as an internal index to points of law decided in that case; or they may learn that "Key" or section numbers in case headnotes correspond to "Key" or section numbers in related case digests. After acquiring several pieces of this kind of information about a given resource, students may perform library assignments (colloquially termed "search and destroy missions" or "treasure hunts")[14] designed to test their understanding of particular bibliographic characteristics. This instructional pattern repeats itself as students study the characteristics of various types of law books, such as statutory and administrative codes, case digests and reporters, Restatements of the Law, *American Law Reports,* and legal encyclopedias.

Although sometimes described as teaching students how to "use law books," this instructional approach reflects too narrow a notion of what it means to use law books. The approach is analogous to asserting that a student can learn to play the piano by having the teacher describe what the piano looks like, or even by having the teacher explain how to play isolated keys on the piano's keyboard. For both the piano student and the legal research student, the information they acquire needs a broader, functional context that allows them to apply the information in a realistic way.[15]

In any meaningful sense, "using law books" means doing legal research, and doing legal research requires integrating a variety of law books into a comprehensive research strategy for investigating possible solutions to legal problems. Consequently, a sound approach to teaching legal research must develop in students the ability to draw creatively and comprehensively on various law books in developing a problem-solving strategy. A method of instruction that revolves around descriptions of law books, or even around the mechanics of using particular law books, will almost inevitably fail to provide students with the understanding necessary to do legal research.[16]

---

14. *See, e.g.*, Danner, *From the Editor: Teaching Legal Research*, 78 LAW LIBR. J. 599, 601-02 (1986). The term "go fetch exercises" would also describe these assignments.

15. This is true of teaching any process as Wesley Gilmer, Jr., has noted:

> The skills of legal research and legal writing are akin to the skills of playing baseball and football, the skills of playing the piano and guitar, and the skills of driving an automobile. People learn those skills mainly by doing them. . . . Requiring the law student to perform the operations himself is the way to teach legal research and writing.

Gilmer, *Teaching Legal Research and Legal Writing in American Law Schools*, 25 J. LEGAL EDUC. 571, 571 (1973).

16. *Cf.* Barkan, *supra* note 6, at 940 ("[T]he ability to identify and use legal resources does not necessarily produce proficiency in legal research."). The context in which Barkan employs the term "use" indicates he invoked the narrow notion of the term. *See id.* Barkan contrasts legal bibliography and its narrow sense of "using" law books with the broader concept of legal research. *Id.* at 925 n.2, 940.

Nor does adding selected research-related pointers in a bibliographically oriented context improve the situation. Practical advice necessarily relates to doing something; someone who does not know how to perform the activity to which the advice relates will be at a loss to make sense of the advice. Students in a legal research course need to be taught the research process itself if they are to appreciate how to fit practical pointers into their overall research efforts. Isolated practical pointers cannot substitute for the necessary contextual understanding provided by a systematic explanation of the legal research process.

The failure of the traditional bibliographic teaching approach to provide a meaningful, process-focused context is rooted in the assumption, apparently first articulated by law librarian Frederick C. Hicks, that it is possible to isolate the study of the characteristics of law books from the components of legal problem-solving.[17] Hicks's "deep-set reverence"[18] for law books as objects inherently worthy of separate study by all legal researchers[19] clouded his understanding of why researchers care about law books: researchers are interested in solving problems through legal research, and they view law books as tools for reaching that goal.[20]

For researchers, bibliographic information about law books is meaningless when divorced from the legal research process. Hicks's isolationist approach may suit the teaching of law librarianship,[21] but legal researchers need a different kind of instruction. "[L]egal researchers need strategies to put legal sources into context."[22]

The thrust of legal research instruction, therefore, should not be to focus on a particular law book and catalog all its features, go on to another law book and catalog all its features, and so on. A more suitable approach organizes the course around the steps researchers need to perform (*e.g.*, finding new legal authorities, and reading and updating authorities that have already been found). Then, in discussing a particular step, the course should introduce the books researchers use to carry out that step.

---

17. In 1918, in *The Teaching of Legal Bibliography*, Hicks set forth his conception of a legal bibliography course within the law school curriculum. Hicks, *supra* note 3. Hicks's recommendations established the model on which law schools patterned similar courses. The Hicks-inspired isolationist teaching approach is discussed in more detail at pp. 26-33, *infra*.

18. Morse, *supra* note 3, at 258; *see also id.* at 254. Hicks wrote prolifically, *see Bibliography of Books and Articles by Frederick C. Hicks*, 37 LAW LIBR. J. 19 (1944), and his writings about law books demonstrate the reverential attitude to which Professor Morse refers. *See, e.g.*, Hicks, *Odor of Sanctity*, 30 LAW LIBR. J. 415 (1937).

19. Hicks, *supra* note 3.

20. *See supra* note 9.

21. *See supra* note 13.

22. Ramsfield, Book Review, SEC. LEGAL WRITING, REASONING & RES. NEWSL., Oct. 1986, at 15, 15.

A comparison of how a given bibliographic characteristic (in this example, a case headnote) would be explained in a bibliographically oriented course and in a process-oriented one illustrates the difference between the two teaching approaches. A case headnote, of course, serves different functions at different stages of research. The sequential number of a headnote in a particular case report acts as an internal index to that case; in this capacity, the headnote number assists in the reading step of research by guiding a researcher to the place in the case that might prove most relevant. In addition, the headnote's "Key" or section number provides a bridge through which the researcher can link the point of law decided in the case with other cases addressing the same legal issue;[23] as a bridge between cases, the headnote aids in the finding step of legal research by functioning as a tool for identifying other relevant authorities. Finally, when a researcher refers to a superscript headnote number in a *Shepard's* citator table, the headnote also serves a function in the updating step of research.[24]

In a bibliographic teaching approach, instruction about case headnotes would typically occur during a discussion focusing indiscriminately on *all* the bibliographic characteristics of a case report (*e.g.*, caption, docket number, date of decision, names of attorneys, as well as headnote numbers). If students receive information about the practical uses of these bibliographic features, the presentation typically covers, simultaneously, all the possible uses of a given feature. Thus, the information remains crystallized around books and their characteristics, instead of around legal research steps.

To do research, however, students will need to know at what step in the legal research process to apply the information they have acquired about the books. Consequently, before students can use the bibliographic information, they must sift through and somehow reclassify it on their own along functional lines. This need to reclassify is a serious drawback to a bibliographic teaching approach and, obviously, is an even more serious drawback if students fail to perform the reclassification correctly. Failing to successfully accomplish the task forces a student to learn legal research through unguided trial and error, a haphazard approach virtually guaranteed to produce poor research skills.[25] Moreover, because a

---

23. *See, e.g.*, C. WREN & J. WREN, *supra* note 11, at 53, 56-58, 59.

24. *Id.* at 107-08.

25. All legal research involves testing of hypotheses, which, of course, implies some trial and error. *Cf.* MCGEORGE SCHOOL OF LAW, UNIVERSITY OF THE PACIFIC, A DIALOGUE ABOUT LEGAL EDUCATION AS IT APPROACHES THE 21ST CENTURY 13 (J. Kelso ed. 1987) (comments of Professor Anthony Amsterdam) ("It is seldom practicable and almost never efficient to begin to deal with any situation by gathering every piece of information that might conceivably be remotely relevant.

bibliographic emphasis severs instruction about the books from instruction about the steps of the legal research process, accurate reclassification of bibliographic information becomes a problematic task for students.

By contrast, in a process-oriented teaching approach, instruction focuses on what the researcher is trying to accomplish and on the step in the overall research process at which the researcher has arrived. It is within *this* context that students learn about the particular bibliographic features useful at different steps in the research process. For example, when students are learning about the step of finding legal authorities, the instruction explains the use of a headnote's "Key" or section number as a bridge to case digests in order to find other cases involving the same legal issue. When students get to the step of reading the law they have found, the instruction explains the value of headnote numbers as internal indices. Similarly, when students are ready to learn about updating legal authorities, the instruction explains the role of superscript headnote numbers in *Shepard's* citators. This kind of teaching approach ensures that the bibliographic information students receive is already accurately classified, permits students to use the information immediately in doing legal research, substantially increases the likelihood students will learn and remember the steps in the legal research process, and therefore moves students as quickly as possible from learning about legal research to actually doing it.

When extrapolated over the course of a semester of instruction, the divergence between a bibliographic teaching approach and a process-oriented one widens, throwing into sharper relief the fundamental deficiency of a bibliographic orientation in legal research instruction. As students move through a legal research course taught bibliographically, the instruction focuses their attention on individual books, a focus that simultaneously causes students to lose sight of the surrounding process that is critical to understanding the books' importance to legal researchers. By the time students have completed the course, they have been exposed to a

---

Hypotheses about what is really relevant are the precondition of effective information-gathering.") [hereinafter LEGAL EDUCATION DIALOGUE]. Successful legal researchers, however, minimize "bad" trial and error while maximizing "good" trial and error. Researchers accomplish this in two ways: by carefully formulating their initial hypotheses (*i.e.*, analyzing facts and identifying issues) and then subjecting their hypotheses to carefully executed research strategies (*i.e.*, conducting effective research in law books). Legal research instruction must guide students in developing both capabilities as early in their training as possible, rather than leaving them to fumble around in the law books. *Cf. id.* (Professor Amsterdam commenting that legal education should help students develop "modes of thinking that enable one to select better rather than worse initial hypotheses for the purpose of guiding one's information-gathering, then to test and to modify or refine the hypotheses progressively as additional information is acquired"). Otherwise, students will ingrain unsound research habits that will later impede their competent performance as professionals.

substantial—even excessive—amount of information about the attributes of law books, but are unlikely to have figured out how to integrate the books into the comprehensive strategy needed in order to do legal research.[26]

A process-oriented teaching approach, on the other hand, continually reinforces the relationship between law books and how to do legal research; the approach disentangles legal research instruction from the isolationist influence that severs instruction about law books from instruction about the process of employing them. At the end of a course that emphasizes the legal research process, instead of having spent a semester inventorying the characteristics of law books, students will have learned *both* the research process *and* as much information as they need about the books to develop strategies for conducting legal research.

Understanding the relationship between law books and the steps in the

---

26. Some who teach legal research bibliographically will undoubtedly protest that the results of their instructional approach are not so bleak. Yet, considerable evidence substantiates the failure of the bibliographic teaching approach to prepare students to do legal research. The bibliographic emphasis has dominated legal research instruction for nearly 70 years. *See* Mills, *supra* note 3, at 345 ("The method used for teaching legal bibliography is basically that which has been in use ever since courses in legal bibliography began—lectures, library tours and library problems requiring short answers."). *See also* Morse, *supra* note 3, at 255 ("In the most popular model [for teaching legal research], students are introduced to library materials through a series of lectures, show-and-tell sessions, and drill exercises."). After almost 70 years of this bibliographically oriented legal research instruction, the legal community still complains that graduates of even the leading law schools cannot carry out basic legal research tasks. In 1984, for example, Joan Howland, then the reference librarian at Harvard Law School, conducted an informal survey of librarians at leading law firms and found that graduates of Harvard Law School and other prestigious law schools arrived at law firms not knowing "how to research the simplest questions." LEGAL INFO. ALERT, Sept. 1985, at 5. For another report of the survey results, see Mead Data Central's law school newsletter, GREAT LEXPECTATIONS , Nov. 1985, at 7.

> Howland's survey results echoed frustrations voiced in 1977 by Professor Robin Mills:
> Why do recent law school graduates have difficulty using a law library? This question is a never ending source of puzzlement to private law librarians and others who come in contact with new lawyers. Why do they so often need to be taught the fundamentals of legal research? Why aren't the law schools doing their job?

Mills, *supra* note 3, at 343. *See also* Danner, *supra* note 14, at 603 (noting "criticism that summer associates and recent graduates come out of the law schools ill-equipped to do legal research"); Ramsfield, *supra* note 22, at 15 ("Slowly, American law schools are recognizing the need to comprehensively teach legal research. Much of this recognition responds to increased complaints from practitioners that the graduates they hire cannot do research."); Richert, *Oral Competence Testing in Legal Research Techniques*, 77 LAW LIBR. J. 731, 731 (1984-85) ("Frequently, lectures, library exercises, readings, and written examinations seem to have little long-term effect on the law student's ability to perform even simple research. All too commonly, first-year law students obtain a clerkship, then discover they forgot or never learned very much in legal research class."); Sadow & Beede, *supra* note 1, at 30 ("[T]he utter bewilderment of many new lawyers sent out to research their first cases (who 'don't know where to start') is no surprise to librarians. Why else would there be articles on doing elementary research in practitioner's journals?") (footnote omitted); Shapo, *The Frontiers of Legal Writing: Challenges for Teaching Research*, 78 LAW LIBR. J. 719, 725 (1986) ("I have talked to many law librarians who are concerned about law students' inadequate research skills.").

legal research process is indispensable for making informed choices among books during the library phase of legal research.[27] A researcher who does not grasp the relationship between law books and research steps will not recognize which books serve as law-finding tools, which serve as aids in reading the law, and which serve to update legal authorities.[28] To such a researcher, every law book will tend to appear equally useful (or equally useless) at every stage of research. Under those circumstances, the researcher can only wander aimlessly through the law library, hoping to stumble across all the necessary books and suspecting uneasily (and usually correctly) that not all significant sources have been tapped. A bibliographically oriented legal research course, by failing to adequately illuminate the relationship between law books and the research process, leaves students unprepared to make judgment calls about when to use which book and how to make the most productive use of each book selected.

An equally serious area of confusion flowing from the isolationist underpinnings of the bibliographic teaching approach impairs even further students' understanding of legal research. In formulating a research strategy, a student must have "a before-going-to-the-library method of thinking that responds to the nature of the problem."[29] A student cannot engage successfully in this preliminary stage of legal research without knowing how to organize and analyze the facts that will lead to an identification of the legal issues that need to be researched; after all, it is always the facts of any legal problem that suggest—indeed, dictate—the issues of law that need researching. Moreover, fact analysis yields the descriptive words used to gain entry to law books by, for example, looking up the descriptive words in an index to a case digest or statutory code.[30] Only after carefully considering the facts of the research problem can a researcher begin to think about the phase of legal research that takes place in the library.

By concentrating on the attributes of law books, however, bibliographic legal research instruction typically fails to alert students to the essential link between fact analysis and research in law books. Students

---

27. In this article, we use "the library phase of legal research" to distinguish finding, reading, and updating the law from the other steps in legal research. *See supra* note 12.

28. *See, e.g.*, C. WREN & J. WREN, *supra* note 11, at 85-87, 91 (tools that aid in reading the law), 95-122 (tools that aid in updating the law).

29. Ramsfield, *supra* note 22, at 15. *See also* Shapo, *supra* note 26, at 726 (learning legal research "requires the students to define issues [and] plan research strategies. . . . Many students spend too much time in the law library and not enough time thinking and writing.").

30. For a discussion of the relationship between fact analysis and descriptive words, see C. WREN & J. WREN, *supra* note 11, at 32-36, 46-51.

who lack this awareness will be unable to do the organization or analysis of facts or the identification of legal issues that must precede library research. Consequently, their work in the library phase of legal research will almost certainly head down inappropriate paths, virtually ensuring that whatever success they achieve during that phase will occur by chance rather than design.

A sound method of legal research instruction therefore will show students that facts are important in legal research and explain what researchers do with facts before commencing research in law books. As Professor Anita Morse has written, "We must design our research-teaching tools to help a law student organize a legal research project, analyze the fact situation, identify the issues, determine the research tools needed, and integrate authority and analysis in legal problem solving."[31]

By failing to do this, bibliographically oriented legal research instruction raises not one, but two, isolating barriers between students and the development of effective legal research skills. First, the bibliographic approach fails to equip students to perform the critical fact-related analytical work that provides the necessary foundation for researching in law books. Then, the inherent structure of bibliographic instruction compounds this problem by obscuring the relationships among law books as tools for finding, reading (*i.e.*, evaluating), and updating the law during the library phase of legal research: this confusion results from the typical bibliographic teaching model treating books individually, rather than as related components of a system used in developing comprehensive and creative research strategies for problem-solving.[32]

---

31. Morse, *supra* note 3, at 256. "The difficult part [in learning legal research] is defining the problem so that quality research can be done and making effective use of the research product. That is where the ability to 'think and write like a lawyer' is so important and where the student's training must be concentrated." Mills, *supra* note 3, at 346-47. In a typical bibliographically oriented legal research course, "there is little if any instruction concerning how to organize a research project—how to define the problem, where to begin research and how to keep track of the research product." *Id.* at 346.

The teaching of this preliminary phase of legal research is discussed in more detail at pages 36-42, *infra*.

32. As Jill Ramsfield, Instructor of Legal Research and Writing at Georgetown University Law Center, has written,

> The bibliographic approach fails to explain the organization of legal resources, which is a complex system intended to both deliver new information quickly and catalog the information in several places. This system can overwhelm entering law students.
>
> New legal researchers need strategies to put legal sources into context. These research strategies must be more than divided methods for each source. A strategy must . . . respond[] to the nature of the problem by analyzing not only what source[s] are available, but also which ones are most appropriate for that problem: for example, looseleaf services are more useful than hornbooks in researching most tax problems. The bibliographic approach . . . does not provide strategies.

Ramsfield, *supra* note 22, at 15. Ramsfield goes on to note the importance of "introduc[ing] sources in the context of a strategic approach to the legal research process." *Id.*

III. Overcoming "Bibliocentrism"

In even the most process-oriented approach to teaching legal research, a certain amount of bibliographic description remains important. Thus, both the bibliographic and process-oriented approaches require students to familiarize themselves with information about law books. Organizing the course around the process rather than the books, however, results in a needed shift in emphasis and timing in the presentation of the bibliographic information.

With respect to emphasis, the bibliographic information appears only in the amount necessary to advance an understanding of the legal research process. With respect to timing, the bibliographic information appears as necessary in the course of explaining the actual process of researching legal problems and clarifying which law books to use to carry out each step in the legal research process. Compared to a traditional bibliographic teaching approach, process-oriented instruction can cover less bibliographic information,[33] but more precisely tailor this information to the researcher's practical needs.

At first, this shift in emphasis and timing might seem subtle or inconsequential, but it actually goes directly to the heart of what makes the process-oriented teaching approach effective.[34] Correcting the emphasis and timing in the presentation of the bibliographic material creates a course structure that illuminates the process the students are trying to learn and restores the legal research process to its appropriate role as the central focus of legal research instruction.

Illustrating the impact of the shift: an analogy. Imagine using each teaching approach in another setting, such as teaching someone how to build a house. In the bibliographic analog, the instructor would describe each tool (*e.g.*, power saw, hammer, miter box, chisel) a carpenter would use over the course of the project. The instructor probably would also add a few practice pointers (for example, that the chisel is used to carve wood and the miter box is for cutting lumber at angles); the instructor probably would even have students try out the tools (for example, using the hammer

33. Although it might be desirable for law students to be as familiar with law books as are experienced law librarians, "that is hardly realistic and actually unnecessary." Mills, *supra* note 3, at 346.

34. Notably, those who teach substantive courses, such as contracts or torts, have long recognized the importance of emphasis and timing in the presentation of their course material. *Cf.* R. Stevens, *supra* note 1, at 56 (noting the transition from chronologically arranged casebooks to doctrinally arranged casebooks). *See also* Redmount, *A Conceptual View of the Legal Education Process*, 24 J. Legal Educ. 129, 140 (1972) ("'Learnability' requires that subject matter material conform to properties of logic and intellect. This means that form, sequence and organization are important in each of the complexes of material to be observed.").

to nail two boards together). At the end of this lecture about the tools, the instructor would direct the students to "go out and build a house." Eventually, some students might figure out how to accomplish the task, but the odds run heavily against success.

The process-oriented analog, on the other hand, would have the instruction track the process of constructing a house from the ground up. The instructor would start by explaining how to build a foundation for the house, then move on in an orderly manner, following the construction project through its various phases (*e.g.*, raising exterior walls, adding the roof). In explaining each phase of the construction, the instructor would describe the tools needed for that part of the job and show how to use them. At each point, the instructor also would clarify why a particular task is performed during one stage rather than another. This natural progression would continue until the construction was finished. At the conclusion of this course, the students would understand the process of building houses and be far more likely to succeed in actually building them on their own.

Despite their obvious differences, building a house and doing legal research share an equally obvious similarity: both involve a process for achieving a goal. The only truly effective way to teach someone—or for someone to learn—how to engage in a process is to ensure that the structure, or context, for the instruction reflects the actual process to the greatest degree possible.

The medium and the message: the value of symbiosis. In teaching legal research, as in every area of communication, the medium is an inseparable element of the message. Any audience picks up two signals: a message from the words themselves, and a message from the context in which the words appear.[35] To be effective, a teaching approach must avoid dissonance by ensuring that the messages from the course's content and context work symbiotically.

In addition, the messages sent collectively by content and context need to reinforce the overall objective of the course. For legal research instruction, teaching therefore proceeds most effectively, and learning occurs most easily, when the content and context of the course work together in a way that strengthens student comprehension of how to do legal research.

---

35. *See, e.g.*, M. McLuhan, The Medium is the Massage 8 (1967) ("Societies have always been shaped more by the nature of the media by which men communicate than by the content of the communication."). *Cf.* Calhoun, *Thinking Like a Lawyer*, 34 J. Legal Educ. 507, 510-11 (1984) (noting that people perceive the content that the context prepares them to perceive); Mills, *supra* note 3, at 345-46 (observing that factors other than the actual content of a traditional legal research course, *e.g.*, lack of faculty status for instructors, too little academic credit given to students for the course, and pass/fail grading, lead students to conclude that the course is not important).

Bibliographically oriented legal research instruction undercuts student comprehension because the course's content and context fail collectively (in addition to failing individually) to advance the students' understanding of the research process. In other words, the course content, on its own terms, confuses students because the instruction purports to explain how to do legal research but instead surveys law books. Then, to the degree the course's content touches occasionally on the process of researching, the course context (*i.e.*, the organization of the information) is still determined by the characteristics of law books;[36] the context therefore undermines whatever allusions to the research process may appear in the course content.[37] As a result of these structural defects in the bibliographically oriented approach, students are left to struggle unnecessarily— and largely or even entirely without guidance from their legal research course—to try on their own to piece together an understanding of how to do legal research.

Significantly, substantive law school courses do not pit course content and context against each other or against the course objective. The fundamental goal of a substantive law course is to teach students ways of thinking about and solving problems in a given area of law, whether those problems arise as hypotheticals posed by the professor during the course or whether they arise as real disputes, involving novel facts, that the students will confront after graduation. To accomplish this objective, professors in substantive law courses first define the course content they want their students to learn (for example, the legal principles pertaining to contracts or torts) and then select a course context for the information that will help students develop appropriate ways of thinking about the material presented in the course.

This context consists of a series of related frameworks for solving problems in the area of law being studied. These frameworks guide students toward categorizing legal principles in order to apply the principles effectively. By the end of a substantive course, students have learned not only individual principles of law, but how to draw creatively and comprehensively on these principles to solve legal problems. In essence, each substantive course teaches a process—how to function like a lawyer with respect to problems in a specific area of law—and each substantive

36. *See supra* note 5.

37. Naturally, if the instruction *completely* ignores the legal research process in favor of simply teaching the attributes of law books, the course's content and context will work in unison because both will address law books instead of legal research. This perfect harmony between content and context will be gained, however, at the expense of achieving in any degree what should be the course's objective: to teach students how to do legal research, rather than to prepare them to become law librarians.

course is structured so that its content and context work symbiotically to illuminate that process and equip students to engage in it.

For example, a professor of contract law would convey contract principles through several related frameworks that mirror the components of a contract problem, *e.g.*, a framework for organizing and examining legal principles pertaining to the concept of making an offer, a framework for considering principles about accepting an offer, a framework for dealing with principles about breach of contract, and a framework for studying principles about damages flowing from breach. Similarly, a torts professor would convey course material around frameworks—for duty, breach of duty, harm, proximate cause, and damages—that reflect the components of a torts problem. In each instance, the frameworks contribute to the students' understanding of how to approach the subject matter.[38]

By contrast, bibliographic legal research instruction has typically failed to provide a comparable series of frameworks through which students can approach the problem that needs to be solved in a legal research course—namely, figuring out how to synthesize and apply in a research project the information the course presents about law books.[39] Without relevant frameworks for discerning the functional relationships among law books, and the relationship between law books and the process of using them, students will remain puzzled as they try to figure out how to use the law library to do legal research.[40]

---

38. Law, as subject matter, is theory and information about many things. It has structural and functional components that need to be identified and assimilated within a framework of formal knowledge and practical utility. This means distributing substantive materials in terms of a cohering framework. Excessive chaos is avoided if subject matter in law is ordered in terms that afford discriminative identification, possess syntactical relation and show logical progression. Materials need to be organized in terms of units of instruction whose size and relation facilitate learning and comprehension. There are also modes of representation and instructional economies that facilitate assimilation and skill development. Subject matter materials clearly have to be defined, sequenced, organized, related and ultimately learned in some manner.

Redmount, *supra* note 34, at 139 (footnotes omitted).

39. This statement of the problem that students need to solve in a legal research course contrasts with the way the problem is viewed in bibliographically oriented courses. There, the problem is too often posed as simply completing treasure hunt exercises instead of learning how to use the law library to research answers to legal problems.

40. If substantive law courses were structured like bibliographically oriented legal research courses, students would be taught "black letter" principles of law, but not be given the conceptual frameworks that make those principles meaningful and that equip students to apply their learning.

Mary Foote nicely phrased the alternative to frameworks when she referred to the situation that results when students do not receive well-organized instruction: students, she wrote, are left with only "stray bits of knowledge, accumulated no one knows how nor why"; these stray bits "form the weak link of the chain which alone can secure to the young attorney prominence and success." Foote, *supra* note 1, at 28.

For a discussion of the problem-solving frameworks the process-oriented teaching approach imports into legal research instruction, *see infra* pp. 33-49.

The medium and the message: the value of synergy. The anomalous structure of bibliographically oriented legal research courses also extends to the structure's lack of synergy. Instructional content and context in a substantive course, in addition to working symbiotically, work synergistically as they move students toward the course objective of getting them to respond like lawyers. In a substantive course, the professor introduces a legal principle and explores its ramifications by discussing various fact patterns; this exploration challenges students to think like lawyers about the course material. As students meet early challenges of this sort, their thinking abilities grow more sophisticated, allowing the professor to introduce increasingly complex legal principles and problems that require the students to draw on what they have already learned and to integrate that knowledge with the new material. In a contracts course, for example, students will draw on the principles they have learned about making an offer as they learn about principles relating to accepting an offer. As students meet this greater challenge, the professor introduces principles and problems that require even more sophisticated integrations of old knowledge and new material, developing still further the students' abilities to respond like lawyers to increasingly difficult legal problems.

This cycle repeats itself in a process that creates an upward spiral of sophistication in students' abilities to handle course material. Through its recurring sequence of integrations, the structure of a substantive course constantly pushes students' legal problem-solving abilities to new and higher levels, and does so at a constantly accelerating pace. Thus, the synergy between the course material and the method of its presentation affords students a quintessentially dynamic learning experience.

A bibliographically oriented legal research course, on the other hand, lacks a similarly synergistic relationship between course content and context. Students typically learn about one type of law book (such as a case reporter), perform some assigned library exercises designed to reinforce their knowledge of the book's bibliographic characteristics, and then find their attention abruptly redirected to another type of law book (such as a statutory code). This disjointed approach is repeated for each type of law book surveyed in the course. Ordinarily, the later material presented in the course fails to build on material presented earlier or to require students to integrate their understanding of the old and new material: knowing about a case reporter, for instance, does not in any significant way help a student learn about statutory codes.[41]

---

41. The structure of a legal research course taught along bibliographic lines is perhaps best reflected in the organization of the kind of textbook that traditionally has been assigned in bibliographically oriented courses. In keeping with the structure of the textbooks, professors in these

By channeling students' efforts into memorizing information about the characteristics of law books instead of toward understanding the process of using law books to seek answers to legal problems,[42] bibliographically oriented legal research courses impede the development of students' abilities to function like lawyers. Although the learning curve rises with respect to the characteristics of law books (assuming students remember the bibliographic details),[43] the curve does not rise with respect to understanding how or when to use law books to do legal research. Consequently, students in these courses too frequently find themselves extraordinarily confused.

Teaching legal research along process-oriented lines, on the other hand, invests a legal research course with the kind of synergy between course content and context that facilitates learning in substantive courses. Consistent with the actual nature of legal research, the instruction conveys course material as a series of steps that flow naturally from one another.[44] A legal research course with this kind of presentation, like a substantive course that presents material through a series of functionally related frameworks, equips students to build on previously learned course material as they assimilate new material, enables students to apply increasingly sophisticated legal research techniques, and shows students how to integrate old and new information about law books and legal research

---

courses ordinarily arrange course material according to types of law books. For example, the first few chapters in one bibliographically oriented text are entitled "Dictionaries, Treatises, and Casebooks," "Legal Periodicals," and "Encyclopedias and *A.L.R.* Annotations," with the remaining chapters continuing in a similar vein. *See* THE PROCESS OF LEGAL RESEARCH, *supra* note 5. *See also, e.g.*, M. COHEN & R. BERRING, *supra* note 5; J. JACOBSTEIN & R. MERSKY, *supra* note 5; M. PRICE, H. BITNER & S. BYSIEWICZ, EFFECTIVE LEGAL RESEARCH (4th ed. 1979); L. TEPLY, PROGRAMMED MATERIALS ON LEGAL RESEARCH AND CITATION (2d ed. 1986).

42. By this we mean "using law books" in the broad sense. *See supra* p. 11.

43. Retention of this kind of detail is typically low. *Cf.* Achtenberg, *supra* note 10, at 231 n.18 (noting some legal research texts that "have substantially more material than first year students are likely to need or be able to digest"). As Professor G. Robert Ellegaard noted:

> Some of the scholarly treatises on legal bibliography now on the market are wonderfully comprehensive and detailed. They serve admirably as standard texts in courses on library science, are excellent reference works for use by research instructors; they may be assigned for collateral reading by the more ambitious law students but they are not, in my opinion, suitable teaching media for research training. They tend to burden the student with tedious detail, much of which he will inevitably forget and which if remembered will not be of sufficient practical value to warrant the effort which its assimilation entails.

Ellegaard, *Techniques of Group Education in Legal Research*, 41 LAW LIBR. J. 182, 182 (1948). *See also* Roalfe, *Some Observations on Teaching Legal Bibliography and the Use of Law Books*, 1 J. LEGAL EDUC. 361, 366 (1949). Referring to library tours, Professor Roalfe observed that "[e]ven when the students are taken through the library in small groups, much that is said by the instructor 'goes in one ear and out the other,' just as is usually the case when the instructor lectures about law books in class." *Id.* (footnote omitted).

44. These are the steps enumerated in *supra* note 12; the frameworks for conveying these steps are described at pp. 33-49, *infra*.

techniques into comprehensive strategies for solving legal research problems both in law school and after graduation.

Joining the academic mainstream. Although the absence of problem-solving frameworks makes a bibliographically oriented legal research course a self-defeating anomaly in the law school curriculum, there is no reason a legal research course must exist as a curricular oddity. Legal research instruction lends itself as readily as any substantive law course to using functional frameworks analogous to those that make other law school courses effective: this opportunity to join the academic mainstream arises because in its essential characteristics, a soundly structured legal research course is like any substantive law course.

Both a well-constructed legal research course and a typical substantive law course are means to the same end—teaching students how to solve problems the way lawyers do. A process-oriented legal research course functions as a skills development course that teaches the skill of researching like a lawyer. Similarly, substantive law courses function as skills development courses that use specialized subject matter to teach the skill of "thinking like a lawyer."

Equating substantive courses with skills training and, in effect, lining up legal research courses with substantive courses will undoubtedly strike some as unorthodox.[45] This equation is unorthodox, however, only if viewed against the backdrop of the conventional, long-running debate about a law school's mission, *i.e.*, whether a law school should operate on a graduate school model or on a trade school model.

In that debate, a graduate school model presumes that a law school should concentrate on training students as if they were going to serve on law school faculties, as judges, or in high-level policy-making positions in business and government. Proponents of a graduate school model advocate a curriculum concentrating almost exclusively on the theoretical and policy underpinnings of legal doctrines and generally disdain courses intended to

---

45. *See, e.g.*, Pedrick, Hines, & Reppy, *Should Permanent Faculty Teach First-Year Legal Writing? A Debate*, 32 J. LEGAL EDUC. 413, 413-15 (1982) (comments of Professor Willard Pedrick). *But see* LEGAL EDUCATION DIALOGUE, *supra* note 25, at 14. Professors in substantive law courses engage in "'skills training' . . . when they (teach) students to read and interpret cases and then analyze legal doctrines." *Id.* (comments of Professor Anthony Amsterdam). Clinical education skills

> are no less conceptual or academically rigorous than case reading and doctrinal analysis. We therefore don't see the issue. . . as being whether the law schools should go on teaching legal analysis or should conduct skills training. We see the issue as which legal analyses and skills the law schools should teach, and how much of each.

Id. See also McKay, *What Law Schools Can and Should Do (and Sometimes Do)*, 30 N.Y.L. SCH. L. REV. 491, 507 (1985)(noting that "to think like a lawyer" is a professional skill, and training students in this skill has long been considered the most important objective of legal education); Collins, Book Review, 36 J. LEGAL EDUC. 438, 439 (1986) (describing "conceptual analysis" as "the crucial skill . . . that traditional law school academic courses strive to impart").

develop "grubby" skills considered useful only in practicing law. A trade school model, on the other hand, presumes that a law school exists to train students principally to practice law; advocates of the trade school model argue that most law students go to law school intending to become practicing lawyers and that, as a practical matter, only a small percentage of law school students will go on to serve as law school professors, judges, or high-level policy makers. In the trade school model, therefore, the curriculum includes (either as a component of, or in addition to, the usual substantive courses) substantial instruction intended to develop the skills essential in the practice of law.

This debate has created and perpetuated seemingly intractable, mutually exclusive, but ultimately irrelevant classifications of law school courses as "substantive" or "skills." The presumed dichotomy camouflages the reality that all soundly structured law school courses, whether labelled "substantive" or "skills," are fundamentally alike in their goal of seeking to train students to solve problems like lawyers do, in their process-based subject matter, and in their need for teaching approaches that reflect their process-based subject matter.

To improve their courses, legal research instructors need to recognize the effect the debate over the competing law school models has on proposals to reform legal research instruction. Specifically, classifying law school courses as either "substantive" or "skills" always relegates legal research courses to the "skills" category (and, therefore, to an inferior position in the law school curriculum).[46] Moreover, the classification scheme implies that legal research courses are neither susceptible to the kind of teaching methods used in substantive courses nor capable of engaging students intellectually like substantive courses do. Because the ingrained terminology of the debate effectively places off limits to legal research instructors any potential teaching approach that does not conform to preconceived notions of how a legal research course should be taught, the range of options for improving legal research instruction has been artificially restricted.[47]

Improving legal research instruction requires curriculum planners to disregard the false dichotomy between "skills" and "substantive" courses. Once released from the constraints imposed by the conventional debate, legal research instructors will find themselves free to explore new avenues

---

46. A representative expression of this view of the status hierarchy appears in Pedrick, Hines, & Reppy, *supra* note 45, at 413-15 (comments of Professor Willard Pedrick).

47. Restricting the options for improving legal research instruction has imposed corresponding constraints on efforts to improve the status of legal research courses and those who teach them. For a discussion of how restructuring legal research instruction along process-oriented lines addresses status issues, see *infra* pp. 59-60.

for course development. Research instructors will be able to focus on adopting process- oriented frameworks like those used to convey material in substantive courses. Through this shift, legal research courses can enter the academic mainstream and cease to exist as anomalies in the law school curriculum.[48]

IV. Explaining the Dominance of Legal Bibliography: The Quirks of History

Given the importance of teaching law students how to do legal research,[49] and in light of the inadequacies and anomalous character of a bibliographically oriented approach as a method for teaching research skills, an obvious question arises: how did a bibliographic focus come to dominate legal research instruction? The explanation lies largely in the influence of Frederick C. Hicks, law librarian at Columbia University at the time he wrote a landmark article in 1918 entitled "The Teaching of Legal Bibliography."[50] In proposing that law schools establish courses on "legal bibliography proper," Hicks effectively diverted attention from

---

48. Of course, the debate about whether the graduate school model or trade school model should prevail will not abate any time soon, and the artificial distinction between "skills" and "substantive" courses will not quickly disappear. In the meantime, however, legal research instructors do not have to let the terminology of the debate limit their efforts to develop new course structures patterned after substantive courses. In addition to making their courses more effective, legal research instructors who take this tack may hasten the transition of the debate into more worthwhile arenas.

For example, instead of remaining tied to either a graduate school or a trade school model, law faculties might adopt a curricular model analogous to the music conservatory approach suggested to the authors by Jill Ramsfield, Instructor of Legal Research and Writing at Georgetown University Law Center. In a music conservatory, students pursue studies in three broad areas: music theory and music history (both of which can be analogized to substantive courses in law school) and applied music (analogous to law school legal research and writing courses, which teach students how to develop and express arguments based on the legal doctrines taught in substantive courses). A music conservatory curriculum functions collaboratively, with instruction in each area consciously building on and reinforcing instruction received in the other areas. Music conservatory faculties recognize that music history and theory lack meaning without effective expression of the music itself. Consequently, the music conservatory curriculum avoids foundering on a dispute about which educational component should predominate and does not derail on artificial distinctions among courses based on that dispute.

49. *Cf.* Childs, *A Law Student's Criticism of the Case Method*, LEGAL REFERENCE SERVICES Q., Winter 1985-86, at 119, *reprinted from* 26 GREENBAG 103 (1914). Childs wrote:

> "Oh," the stock expression is, "he'll naturally learn how to use the books." Some people seem to think that a knowledge of the use of law books comes without an effort. But after watching the performance of several hundred different lawyers in court, the writer is convinced that a good percentage of them did not know where or how to find the law.

Id. at 121. *See also* Foote, *supra* note 1, at 28 (noting that legal research cannot be learned through intuition: "[i]ntuition will not even teach football"); *Legal Bibliography: From Nutshells to Automation* (panel discussion), 68 LAW LIBR. J. 421, 432-33 (1975) (remarks of Frederick Tagg) ("Without proper grounding in [legal research], a practitioner can't use any of the knowledge gained in the substantive courses in 3 years of law school.") [hereinafter *Legal Bibliography*].

50. Hicks, *supra* note 3.

instruction about legal research and set the tone for seven decades of what has been considered legal research training.

Hicks defined "legal bibliography proper" as the subject that "deals with the repositories of the law"[51]—in effect, a course that concentrated on describing the characteristics of law books. Hicks also envisioned legal bibliography proper as a course in legal history:

> Legal bibliography proper is not merely a description of books. It is also a study of the record of the jural life of a people. This record shows the evolution of law and the civilization back of it. Its very language, diction and style are products of contemporary literary taste; while the evolution of printing, binding, and bookmaking can be traced in the history of law books. . . . Legal bibliography proper should, therefore, be presented as a historical subject by means of which a background is given to the modern picture.[52]

Thus, Hicks's conception of legal bibliography proper did not include instruction about the legal research process.[53]

Hicks's proposal conflicted conceptually with recommendations that others had previously offered. Before Hicks's article appeared, others in the legal community had urged including in the law school curriculum a practical course on legal research (generally embraced within a subject called "brief making") that treated the research course more pragmatically than Hicks's proposal restricting the coverage to the descriptions and history of law books.[54] Yet, Hicks's view won

---

51. *Id.* at 5.

52. *Id.* at 6.

53. *See also* Barkan, *supra* note 6, at 925 n.2 ("[L]egal research . . . should be distinguished from the concept of legal bibliography, which is the description and identification of the published sources of the law.").

Legal research instruction remains heavily influenced by Hicks's ideas. In 1977, Professor Mills wrote that "[t]he method used for teaching legal bibliography is basically that which has been in use ever since courses in legal bibliography began— lectures, library tours and library problems requiring short answers." Mills, *supra* note 3, at 345. In 1982, Professor Morse echoed Mills's observation, writing that "[i]n the most popular model [of legal research instruction], students are introduced to library materials through a series of lectures, show-and-tell sessions, and drill exercises." Morse, *supra* note 3, at 255. Morse called for a new model that would "help a law student organize a legal research project, analyze the fact situation, identify the issues, determine the research tools needed, and integrate authority and analysis in legal problem solving." *Id.* at 256.

54. For example, Ohio Supreme Court Justice William T. Spear argued that

> the cause of legal education would be greatly advanced by some special training with respect to the making of briefs. . . . The effort should be to learn what the law is. This, of course, involves the intelligent investigation of authorities, and a study as to the real, rather than merely the apparent, force and scope of legal decisions. It would be well, in my judgment, to have instruction in this field given in every law school.

2 AM. L. SCH. REV. 378 (1902). Iowa Supreme Court Justice Horace E. Deemer commented:

> I have been amazed at the helplessness of law students, and even of lawyers when they go into a library to search for authorities. A good lawyer is one who knows where to look for the law; and after he has found it knows what to do with it. Law schools should teach their students how to do these things.

out,[55] apparently because of fortuitous (for Hicks, anyway) institutional forces at work in the early 1900s.

As Robert Stevens has recounted, the legal profession experienced a turbulent transformation during the period from approximately 1875 through the 1920s as leaders of the bar sought to professionalize the practice of law by imposing more restrictive criteria for bar admission, including stricter educational requirements.[56] Within the law school establishment, a similar movement developed during this period to upgrade and standardize legal education.[57] Advancement toward these goals did not occur uniformly or without opposition. For example, many members of the practicing bar resisted efforts to shift the principal focus of legal training from the law office apprenticeship to the law school classroom and to require law school training as a condition for bar admission.[58]

"The debate was not resolved; it was compromised by a temporary agreement allowing the law schools to monopolize education and the bar to control admission to the profession."[59] This compromise still left open the question of what training to include in the law school curriculum as law schools came increasingly to supplement, and then supplant, law offices as the training ground for new lawyers.

With respect to legal research training, law students evidently recognized the need for instruction on that subject.[60] The first instruction

---

1 AM. L. SCH. REV. 404 (1902). Judge Simeon E. Baldwin of Yale Law School observed:

> One great aim of legal education for America . . . must be to teach how best to handle [law] books, so as to get the most out of them, and to be able to present it in the most effective way. The scholar must learn to search out what he wants intelligently, quickly, accurately. He must learn where to go and when to go; what to look for, and how to read it.

Keasbey, *Instruction in Finding Cases*, 1 AM. L. SCH. REV. 69, 69 (1902) (quoting Judge Baldwin). *See generally* W. LILE, H. REDFIELD, E. WAMBAUGH, E. SUNDERLAND, A. MASON & R. COOLEY, BRIEF MAKING AND THE USE OF LAW BOOKS (R. Cooley 2d ed. 1909). Cooley's text "covered not only where and how to find the law, but also how to use decisions and statutes." Rombauer, *First-Year Legal Research and Writing: Then and Now*, 25 J. LEGAL EDUC. 538, 539 (1973). For more historical background, see Barkan, *supra* note 6, at 927-29; Hicks, *supra* note 3, at 1-4; Mills, *supra* note 3, at 343; Rombauer, *supra*, at 539-40.

55. Rombauer, *supra* note 53, at 539 ("The Hicks view apparently prevailed."). *See also* Barkan, *supra* note 6, at 929 (Hicks's text "appeared in three editions and for years was considered to be 'a natural monopoly.'").

56. R. STEVENS, *supra* note 1, at 20-130, 172-76. *See also* Huffmann, *supra* note 1, at 521 (summarizing the transition from the apprenticeship system to the academic training of lawyers).

57. The reform agenda included such changes as imposing stricter criteria for admission to law school, using the case method to import a "scientific" approach into legal training, and eliminating night law schools.

58. *See* Morse, *supra* note 3, at 243 n.59 (summarizing the impact of the early disputes between academics and practitioners regarding skills training in the law school curriculum).

59. *Id.* at 237.

60. The observations of a University of Michigan law student at the turn of the century reflected the view of many students:

offered to law students to meet this need came not from the law schools, however, but from law book publishers' travelling representatives (such as Roger Cooley of West Publishing Company), who visited law school campuses in the early 1900s and lectured on the use of their employers' publications.[61] Because of the popularity of these lectures[62] and because of the impetus provided by the publication in 1906 of the first edition of *Brief Making and the Use of Law Books*,[63] law schools gradually began incorporating some sort of instruction about law books into their curricula.

A decade later, though, law school instruction about law books was "still in its infancy,"[64] with "the idea that the subject is one for which a place should be made in the curriculum . . . not yet generally accepted."[65] It was in this unsettled milieu in 1918 that Hicks's article, *The Teaching of Legal Bibliography*,[66] advanced the first scholarly rationale for offering law school instruction about law books. In 1923, Hicks followed his article with *Materials and Methods of Legal Research*, a textbook on legal bibliography.[67] Despite the reference to legal research methods in its title, Hicks's text (like others that followed his) focused on describing law books and their narrow, mechanical use rather than the research process.[68] Hicks's article and textbook established legal bibliography (instead of the research process) as the dominant focus for instruction about law books: by the mid-1920s, almost half of the law schools accredited by the

---

> That the students do desire practical information as to how and where to find the law is shown by the interest with which they attend (extracurricular) lectures such as are given by Roger W. Cooley on "How to Find the Law." At the University of Michigan the work is entirely elective. The students are under no compulsion whatever to attend, and receive no credit of any kind for the work. The course is merely called to their attention, without any complete explanation of its nature or value. Yet so keen is the feeling that work of this nature is invaluable that the attendance is large and the work followed with closest attention.

Towers, *A Student's Opinion of Practical Law School Instruction*, 2 AM. L. SCH. REV. 556, 557 (1902). *See also* Hicks, *supra* note 3, at 3; Hicks, *Instruction in Legal Bibliography at Columbia University Law School*, 9 LAW LIBR. J. 121, 121-22 (1916) [hereinafter *Bibliography Instruction*].

61. For an account of these lectures, see Hicks, *supra* note 3, at 2-4; Mills, *supra* note 3, at 343.

62. Mills, *supra* note 3, at 343; Towers, *supra* note 60, at 557.

63. W. LILE, H. REDFIELD, E. WAMBAUGH, A. MASON & J. WHEELER, BRIEF MAKING AND THE USE OF LAW BOOKS (N. Abbott ed. 1906).

64. Hicks, *supra* note 3, at 2.

65. *Id.*

66. *See generally* Hicks, *supra* note 3.

67. F. HICKS, MATERIALS AND METHODS OF LEGAL RESEARCH (1923).

68. Barkan, *supra* note 6, at 928-29. Hicks's text was criticized in a book review for slighting an explanation of legal research. *Id.* at 929. *See also* Price, Book Review, 35 LAW LIBR. J. 503, 504 (1942) (reviewing Hicks's third edition and noting that "[i]n spite of its title, methodology is by no means its strong point."). It was, rather, a book about legal bibliography, and "it is still considered to be one of the most scholarly works on legal bibliography ever produced." Barkan, *supra* note 6, at 929.

Association of American Law Schools offered instruction in legal bibliography.[69]

The historical context in which Hicks's article appeared undoubtedly figured significantly in the acceptance of his hypothesis that the law school curriculum should include a course on "legal bibliography proper," isolated from instruction about the legal research process.[70] As practitioners warily viewed attempts to substitute academic legal training for law office training, and as law school faculties sought to professionalize legal training through "scientific" teaching techniques and standardization of curricula,[71] Hicks's article offered an approach to teaching about law books that held appeal for both camps.

For practitioners, Hicks's article indicated a willingness to provide instruction about important lawyering skills. Hicks proposed including within the law school curriculum a series of courses that collectively would teach "legal bibliography," a subject with broader scope than "legal bibliography proper":

> There are at least three divisions of the subject which we have spoken of as legal bibliography. They are, first, legal bibliography proper, which deals with the repositories of the law; second, methods of finding this law, which is an art to be acquired; and third, brief-making, which has to do with the orderly presentation of arguments based on authorities, and in conformity with the rules of the court to which they are addrest [sic].[72]

The second and third components of Hicks's conception of legal bibliography thus offered an academic source of the skills acquired through law office training:[73] as an apprentice in a law office, the would-be lawyer learned legal research, legal reasoning, and briefing by "assist[ing] his teacher in the search for precedents, not[ing] the books consulted, the manner of their use, and the purpose served by each."[74]

For the legal academic community, on the other hand, Hicks implicitly offered reassurance that including instruction about legal bibliography

---

69. Mills, *supra* note 3, at 343.

70. *See supra* notes 51-53 and accompanying text. In his article, Hicks made clear the isolationist character of his approach by proposing a sequence of separate courses in which legal bibliography proper would be taught in the first year of law school, "the art of finding known cases and statutes" would be taught late in the first year, "finding unknown cases and statutes" would be delayed until "a later period," and "brief- making" would be taught in the third year. Hicks, *supra* note 3, at 6-7.

71. *See supra* note 57.

72. Hicks, *supra* note 3, at 5-6.

73. Notably, though, despite proposing to teach lawyering skills in addition to "legal bibliography proper," Hicks did not include skills-related instruction in *Materials and Methods of Legal Research*, which was generally limited to the first of Hicks's three proposed divisions of legal bibliography.

74. Foote, *supra* note 1, at 25.

would not dilute the intellectual rigor of the rest of the curriculum or undermine the emerging movement to standardize legal training and bring scientific methods to bear on legal education. Hicks provided this reassurance in part through his status. He offered an academician's support for including in the law school curriculum a subject to which many faculty apparently objected,[75] and his proposal carried with it heightened respectability, coming as it did from a noted legal scholar and law librarian at Columbia University[76] rather than from one of the law book publishers' sales representatives who provided the earliest lectures on legal research. In addition, Hicks presented "legal bibliography proper" as largely a study in legal history,[77] which both positioned the course as an academically rigorous offering and added an element of scholarship presumably not featured in apprenticeship training. Moreover, Hicks's proposal appealed to those who sought to have legal education governed by objective, scientific standards.[78] Finally, by including "legal bibliography proper" as part of a broader course of study that also encompassed legal analysis (under the rubric of "brief-making") and legal research methods,[79] Hicks appeared to propose a course for law students, not a library science course, which professors of the already established law school courses surely would have resisted.[80]

By skillfully appealing to both the practicing bar and the legal academic

---

75. *See id.* at 27 (noting faculty resistance to including a new subject in the law school curriculum); Hicks, *supra* note 3, at 2 ("the idea that the subject is one for which a place should be made in the curriculum is not yet generally accepted").

76. *See* Barkan, *supra* note 6, at 929 (noting Hicks's stature); Schmehl, *Who's Who in Law Libraries: Frederick C. Hicks*, 37 LAW LIBR. J. 16, 19 (1944) (calling Hicks the "Dean of Law Librarians"). *See also* Roalfe, *Frederick C. Hicks: Scholar-Librarian*, 50 LAW LIBR. J. 88 (1957).

77. *See supra* text accompanying note 53.

78. In laying the groundwork for acceptance of his proposal, Hicks specifically noted the deficiencies in then-existing instruction about law books:

> The number of law schools giving definite instruction in this subject by resident teachers is gradually increasing. . . . In a few of these, lectures are still given by representatives of the publishing houses in addition to those provided by the schools. Aside from the mere fact that the schools are taking up the work, the most significant point noticeable is that methods have not been standardized, and that each school is solving its own problem on the basis of local expediency. The time when the courses are given, and the method, means, form and status of the instruction show no uniformity. Instruction under the auspices of the schools is intrinsically more useful than that given by publishing houses. The latter frankly admit that their primary object is to call attention to their own publications. Their lectures lack a scientific basis and are limited in scope. The permanent local instructor on the contrary has the opportunity of presenting his subject in an unprejudiced way, comparing and evaluating the publications of different houses. The courses can be longer, with opportunity for discussion and practise, and attention can be paid to the needs of the individual student.

Hicks, *supra* note 3, at 4.

79. *See supra* note 73 and accompanying text. As already noted, though, Hicks did not actually include such instruction in either the first or second edition of *Materials and Methods of Research*.

80. Hicks evidently recognized that acceptance and success of his proposal depended on the

community, Hicks gained acceptance for adding his proposed course to the law school curriculum. Enhanced by Hicks's status as a scholar-librarian, Hicks's article and textbook then established the bibliographic model as the accepted method of law school instruction about law books.

Hicks's success, however, camouflaged two deeply flawed assumptions underlying his campaign: first, that law students *need* in-depth descriptions or histories of law books to understand how to do legal research[81] and, second, that artificially isolating instruction about law books from instruction about what lawyers do with them is a desirable or effective way to show students how to use law books to solve legal problems.[82]

Hicks compounded these deficiencies by never satisfactorily following through on the second and third components of his broader proposed legal bibliography course. He remained focused on the narrow sense of using law books,[83] and he did not add "brief-making" to his text until the third edition appeared in 1942,[84] nineteen years after the publication of the first edition and nearly a quarter of a century after announcing his proposal in his seminal article. Moreover, his proposal was ambiguous about who would teach the latter two components, suggesting that professors of subjects other than legal bibliography might cover them.[85]

Thus, while proposing a broad, comparatively pragmatic course in legal bibliography, Hicks remained committed mainly to the "legal bibliography proper" component and focused principally on bibliographic descriptions and mechanical uses of law books. By neglecting to nurture the second and third components of his more expansive conception of legal bibliography with the same attention he gave to "legal bibliography proper," Hicks

---

support of the rest of the faculty: he called for "the cordial co-operation of the whole corps of teachers." Hicks, *supra* note 3, at 7.

81. This assumption appears clearly in Hicks's description of his lectures at Columbia: the lectures did not deal with "methods of using law books," but with bibliographic information, and

> attempted to trace the development of the various classes of Anglo-American law books from their beginnings in England to their present-day descendants in the United States. Thus it was hoped that the students might gain perspective in regard to the literature of the law, enabling them to use books intelligently.

Bibliography Instruction, *supra* note 60, at 121. As Professor Mills has noted, however, law students do not need the skills or knowledge of an experienced law librarian; instead, law students need legal research instruction that concentrates on teaching how to "think and write like a lawyer." Mills, *supra* note 3, at 346. *See also* Morse, *supra* note 3, at 256 (an emphasis on the bibliography of law books is more appropriate for training law librarians than for training law students); *supra* note 43.

82. *See supra* note 70 (noting how Hicks proposed to divide up instruction in legal bibliography). Splintering the instruction as Hicks did removes from bibliographic information the context that makes it meaningful to law students. *See, e.g.*, Morse, *supra* note 3, at 256 (noting that students need to be shown how bibliographic information relates to a research problem). *See also supra* p. 12.

83. *See supra* p. 11.

84. F. HICKS, MATERIALS AND METHODS OF LEGAL RESEARCH 353-426 (3d rev. ed. 1942).

85. Hicks, *supra* note 3, at 7.

effectively (though perhaps unintentionally) caused "legal bibliography proper" to be mistaken for legal research. He thereby overshadowed and effectively displaced legal research as the skill law students would learn during the coming decades. Yet, it is precisely the "legal bibliography proper" component in which students least need instruction in order to become competent legal researchers.

Hicks contributed significantly to the development of the law school curriculum by successfully arguing that it include instruction about law books. But because of faulty assumptions underlying his proposal, the "experiment"[86] Hicks launched in legal bibliography has proved unsuccessful at teaching students how to do legal research. After more than seventy years of instruction emphasizing bibliographic characteristics and neglecting the research process, confusion about how to do legal research remains widespread among law students[87] and the legal research course has been reduced to the status of a "problem stepchild" in the law school curriculum.[88]

In short, Hicks's experiment has failed to achieve the goals he originally anticipated. To avoid continued failure, legal research instruction needs a reorientation away from the Hicks-inspired emphasis on the books and toward an approach that emphasizes the process in which researchers use law books.

V. The Teaching of Legal Research: Frameworks for Process-Oriented Instruction

For teaching legal research, we use three related frameworks that organize legal research as a readily understandable process and get students as quickly as possible from studying about legal research to actually doing it.[89] Briefly, the first framework helps students understand the law-creating institutions as a backdrop to understanding the books used for legal research; the second framework provides students a way to evaluate the legal problems that take them into the law library; and the third framework shows students how to conduct research once they reach the library phase of their research efforts.

These frameworks provide students efficient ways of assimilating information about law books and legal research procedures. In addition to

---

86. Hicks himself characterized his instructional approach as an "experiment." *Bibliography Instruction*, *supra* note 60, at 121.

87. *See supra* note 26.

88. *Teaching Legal Writing*, *supra* note 10, at 354.

89. Our frameworks evolved from our experience teaching legal research, as well as from our experience doing legal research as attorneys. The frameworks inform the structure of *The Legal Research Manual*, *see supra* note 11 , although they are not labelled as such in the book.

the frameworks' intrinsic utility for teaching legal research, they introduce into legal research instruction the kind of process-oriented organizational devices that characterize substantive law courses.[90]

A. Framework 1: Legal System Orientation

Through the first framework, students acquire an understanding of the institutions that create law in the United States, the books in which the law is found, and the link between the law-creating institutions and the law books.[91] Within this framework, students first learn to view government as consisting of (for legal research purposes) legislative, judicial, and administrative branches instead of the legislative, judicial, and executive branches taught in college or high school political science courses.[92] Through this perceptual reorganization of the law-creating institutions, students in turn learn to link each institution with a different kind of law (*i.e.*, statutory law, common law, administrative law). As a final step, the framework shows students how to classify according to an easily remembered matrix the law books containing the vast majority of primary authority they will work with as beginning researchers (see Matrix A).[93] In short, the framework enables students to see where law originates and where legal researchers look for the published expression of it.

This framework for orienting students to the legal system brings greater coherence to students' research efforts because it provides a comprehensi-

---

90. The frameworks accomplish this emulation of substantive courses by structuring the legal research course in a way that reflects the problem-solving process the course is designed to teach. *See supra* pp. 20-21.

91. *See* C. WREN & J. WREN, *supra* note 11, at 1-19.

92. Although many entering law students are familiar with the "civics course" view of government organization, a remarkably large percentage of students are not, and few (if any) entering law students understand the importance of reconceptualizing the structure of government for legal research purposes. This recognition is important background for doing legal research, however. *See* C. WREN & J. WREN, *supra* note 11, at 1, 3-4. *Cf.* Barkan, *supra* note 6, at 926 ("[T]he nature of the relationship between the law and its resources requires that some of the substance of the law and the nature of the legal system be grasped before the bibliography of the law can be comprehended."). Similarly, Professor Richard Danner has noted that

> [i]ncoming law students may have a surprisingly low threshold of knowledge about institutions of government and their authority to make law. Classroom presentations [in legal research courses] that discuss how law is made and promulgated, and the current and historical relationships between those processes and legal research will maintain greater student interest in both lectures and assignments than presentations emphasizing bibliographic detail. In schools that do not offer a first-year legal methods or process course, the legal research course may be the only place in the curriculum where these topics are covered formally.

Danner, *supra* note 14, at 601.

93. For an illustration that also shows the link between types of law and law-creating institutions, see C. WREN & J. WREN, *supra* note 11, at 6.

Kind of Law	Where the Law is Published	
	Chronological Arrangement	Topical Arrangement
statutory law	session laws	statutory codes
common law	case reporters	case digests (summaries of primary authority)
administrative law	administrative registers (for rules)	administrative codes (for rules)

Matrix A

ble way to begin understanding the law library and its organization. Students no longer perceive the library as an undifferentiated mass of law books. Instead, students can now start mastering access to the overwhelming number of primary-law books through an easily comprehended matrix that immediately highlights the relationships among the classes of primary authority: rather than thinking there are six different types of primary law, students will come to understand much more quickly that there are three, with each arranged two ways.[94]

By providing generic categories for conceptualizing legal authorities, the framework enables students to see patterns in the way the law and law books are organized, *i.e.*, that different authorities are published in similar kinds of arrangements (chronological and topical) and that these arrangements remain constant across different jurisdictions.[95] Students

94. The relationship between session laws and statutory codes, as well as the relationship between administrative registers and administrative codes, confuses many beginning legal researchers. The matrix quickly dispels that confusion.

95. For example, students can see the functional similarity of the *Federal Register* and an administrative register for a particular state, recognizing that each is a chronological arrangement of administrative rules.

therefore quickly see that the legal research course, like a substantive law course, rests on a coherent foundation.

In addition, by viewing law and the law library through the lens provided by the "legal system orientation" framework, students can better absorb and retain bibliographic details about primary authorities: the framework enables students to systematically pigeonhole bibliographic information in essentially the same way the frameworks in their substantive law courses make it possible to pigeonhole legal principles.[96]

Moreover, when students encounter new law books containing primary authority (whether these books are newly published or simply newly discovered), the "legal system orientation" framework equips students to classify the new material in a way that makes it functionally equivalent to research sources with which the students are already acquainted. The framework thus lets students fit new data into a larger picture that remains constant and familiar.

B. Framework 2: Assessing the Research Problem

Once students have the framework that orients them to the legal system and enables them to start making sense of the law library, they need a way to begin sorting out the research problems that will take them into the library for the library phase of their legal research.[97] Because the success of the legal research that students will do in the library turns on their properly understanding the facts of their research problems, students need an organizational device that appropriately channels their thinking about facts.[98] As Professor Anita Morse has written, "We must design our research-teaching tools to help a law student . . . analyze the fact situation" that defines the research problem.[99] Consequently, the second framework focuses students' attention on the four critical fact-related steps that precede research in law books: "(1) gathering the facts; (2) analyzing the facts; (3) identifying the legal issues raised by the facts; and (4) arranging the legal issues in a logical order for research."[100]

---

96. *See supra* pp. 20-21.

97. The library phase consists of finding, reading, and updating the law. For a discussion about teaching this phase, see *infra* pp. 42-48.

98. "Legal research does not occur in a factual vacuum: the purpose of researching the law is to ascertain the legal consequences of a specific set of actual or potential facts." C. WREN & J. WREN, *supra* note 11, at 29. It is impossible to research the law governing a particular problem without having first examined the facts of the problem. Although it is theoretically possible to conceive of a research question with an answer that does not depend on the existence of any facts—for example, "What is the definition of a 'lottery' under federal law?"—the answer will have no value to anyone until it can be evaluated with reference to a particular set of real or hypothetical facts.

99. Morse, *supra* note 3, at 256.

100. C. WREN & J. WREN, *supra* note 11, at 29. *See also id.* at 29-38.

A framework for evaluating facts and legal issues serves several functions in a legal research course. First, the framework spotlights for students the pivotal role facts play in legal research.[101] Legal research teachers, particularly if they have practiced law, recognize that in the real world, the legal research process begins with fact gathering and analysis.[102] Novice researchers, however, do not understand or appreciate that facts are the starting point in legal research, that only through gathering and analyzing facts can a researcher discover the legal issues requiring research or select appropriate search words for gaining access to the books used for legal research.[103] By focusing students' attention on fact gathering, the second framework alerts students to how legal research begins and avoids the problem of students having an incomplete picture of the research process.[104]

Moreover, the existence itself of the second framework as a distinct aspect of the legal research course also serves a valuable pedagogical purpose. Students are extraordinarily sensitive to what professors consider important for success in their courses, and, based on those perceptions, students make careful economic calculations about how much attention they will pay and how much energy they will devote to various aspects of their courses. When legal research instructors make clear that success in a legal research course (and, eventually, in one's legal career) will depend in

---

101. *Cf.* F. ZEMANS & V. ROSENBLUM, THE MAKING OF A PUBLIC PROFESSION 123-26 (1981) (noting the practicing bar's view that the two most important lawyering skills are, first, fact gathering and, second, the "capacity to marshal facts and order them so that concepts can be applied"). *See also* Davis, *There is a Book Out . . . : An Analysis of Judicial Absorption of Legislative Facts*, 100 HARV. L. REV. 1539, 1539 (1987) ("creation of law 'must depend upon fact-finding'") (quoting Kenneth Culp Davis) (footnotes omitted); Gilmer, *supra* note 15, at 573 (noting that "[f]acts, of course, are the stuff of lawsuits," and the need "to illustrate to the student that lawyers must raise the raw facts of the problem case to abstract generalizations"); Monaghan, *Constitutional Fact Review*, 85 COLUM. L. REV. 229, 255 n.141 (1985) ("[M]any lawyers would insist that who finds the facts is far more important than who applies the law, and at least a plurality of the present Court endorses that view. See Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 84-86 (1982) (plurality opinion).").

102. Even Hicks, who vigorously advocated bibliographically oriented instruction, recognized that the first step in legal research consists of a "search . . . to determine the factual basis of the problem. This is the beginning of every scheme of research, essential always, no matter how you may thereafter proceed." Hicks, *Technique of Legal Research for the Practicing Lawyer*, 31 LAW LIBR. J. 1, 2 (1938). *See also id.* at 3.

103. *See* C. WREN & J. WREN, *supra* note 11, at 32-36, 46-51.

104. Traditional bibliographically oriented legal research courses almost universally fail to address fact gathering. In terms of preparing students for functioning as competent legal researchers, the academic experience with respect to fact gathering presents an especially great discrepancy between what students learn in the classroom and the basic knowledge they need in order to function effectively outside the academic setting.

The omission of instruction about fact gathering and its role as the first step in the legal research process is especially ironic, for one of the first steps legal research teachers take is to gather or create facts for the problems students will research. Thus, gathering facts is a preliminary step for teachers, but not for students.

significant part on students' success in dealing with facts, students will respond by making a corresponding investment of time and effort in dealing suitably with facts in legal research.[105]

By introducing students to the fact-gathering component of the legal research process, the fact-oriented framework performs yet another important function: the framework helps imbue facts with a reality often lacking for students in the academic setting. Facts come cheaply in law school, appearing and disappearing with striking casualness. In legal research courses, facts typically materialize ready-made in written handouts prepared for students. In substantive law courses, professors pose hypothetical fact patterns and then instantaneously alter the patterns after students answer questions based on the earlier facts. Thus, the academic context in which students traditionally encounter facts makes it seem that facts surface effortlessly.

Outside the academic setting, of course, facts do not emerge this conveniently, and students need to realize that lawyers do not acquire facts in neat packages ready-made for legal research. Rather, facts come to light through activities like interviewing clients and witnesses, reviewing documents such as police or medical reports, consulting experts, and inspecting tangible evidence such as murder weapons.

Because legal research begins with trying to identify relevant facts, a training program for preparing students to do legal research should equip students to understand where facts come from and how to search them out. Even if a legal research course does not include an exercise in fact gathering,[106] a well-designed legal research course will include at least a lecture explaining how researchers actually gather facts in practice. By providing this focus, the fact-related framework counteracts the tendency

---

105. *Cf.* Kissam, *Thinking (By Writing) About Legal Writing*, 40 VAND. L. REV. 135, 153 (1987) (observing that students will not forgo case outlines and hornbooks in favor of critically thinking about cases "unless the professor can demonstrate to her students that a day-to-day critical reading of cases will be necessary either to obtain a successful grade or to avoid painful classroom embarrassment"); Shapo, *supra* note 26, at 721 (observing that students are "economic actors" in allocating their time).

106. Ideally, the research problems on which students work in a legal research course will originate in facts the students have gathered themselves; through such experience, students gain insight into the continuity between fact gathering and their later research in law books. Instructors can simulate the fact-gathering component of legal research through a short classroom exercise. Simulations can include having students collectively interview a "client" played by the teacher or a second- or third-year law student, examine pertinent documents (*e.g.*, an apartment lease), or review narrative statements of parties or witnesses (in effect, transcripts of interviews minus the questions but including the kind of digressions with which lawyers often have to contend in the course of uncovering salient facts). Compared with research exercises in which students have facts presented to them in a written summary, simulations actively engage students in extracting important facts from a larger jumble of facts and introduce students to using fact-gathering techniques much like those lawyers use to initiate the research process.

of the academic setting to mask the vital role fact gathering plays in legal research.[107]

After exposing students to facts, the second framework goes on to establish fact gathering as a foundation for, and logical transition into, the next fact-related step in legal research, *i.e.*, analyzing facts. Someone who gathers facts will inevitably come to ask why those facts need gathering. Asking "why?" focuses attention, in turn, on the core distinction between relevant and irrelevant facts. Homing in on this distinction constitutes the starting point for the fact analysis that must precede work in law books and leads researchers to sense the need for a more finely tuned mechanism for imposing order on relevant facts so that research into the facts' legal significance can proceed.

The fact-oriented framework addresses this need by introducing students to a system for categorizing the elements common to all legal problems.[108] Several of these systems exist, such as those suggested by West Publishing Company[109] and Lawyers Co-operative Publishing Company.[110] Regardless of the specific categories used in the various systems for analyzing facts, the categories show students that filtering facts through one of the systems serves two essential purposes for a legal researcher. First, the categories guide researchers in developing fact (or "descriptive") words for gaining access to law books by, for example, looking up the words in the index to a case digest, statutory or administrative code, or other resource.[111] Second, the categories enable researchers to identify the legal issues raised by the facts.[112]

Legal research courses usually present students with some system for analyzing facts, but too often the presentation fails to adequately explain

---

107. As a consequence of understanding how lawyers gather facts, students are also likely to develop a heightened appreciation that the facts underlying the judicial opinions they read during the library phase of legal research did not surface spontaneously, unlike facts in law school hypotheticals. With this appreciation, students can better sense the immediacy of the facts in the cases, and therefore of the issues and holdings in those cases. Students are more likely to see the cases as having roots in a real-world context, making the reading of cases more engaging than it might otherwise be. *Cf.* Danner, *supra* note 14, at 602 (noting the value of "inject[ing] life" into legal research exercises by developing assignments "around a factual situation that poses enough analytical challenge to interest the students").

108. *See* C. WREN & J. WREN, *supra* note 11, at 32-36.

109. In West's scheme, "the five elements common to every case" are parties involved in the case; places where the facts arose, and objects and things involved; basis of the case or issue involved; defense to the action or issue; and relief sought. WEST'S LAW FINDER 22 (1987).

110. Lawyers Co-operative recommends using the "TAPP-rule" to look for descriptive words that suggest things involved in the case; acts involved in the case; persons involved in the case; and places where the facts arose. THE LIVING LAW 1987/1988, at 9 (1987).

111. For a discussion of the use of fact, or "descriptive," words in finding the law, see C. WREN & J. WREN, *supra* note 11, at 32-36, 46-51.

112. *Id.* at 32-36.

how to use the system or fails to emphasize sufficiently the purpose of engaging in fact analysis. The common result is that students are left in the dark about the critical link between fact analysis and the research they hope to perform in the law books. When students lack a clear understanding of the techniques for (and need for) fact analysis, the facts of their research problems remain a largely impenetrable heap, leaving students bewildered about how to get from their research problems into the law books.

For most students, converting the facts of their research problems into terms that will open a path into law books presents one of the biggest obstacles to doing successful legal research. Presenting fact-analysis techniques as a unit within the larger fact-oriented framework illuminates the path by unveiling the mechanism for effecting the necessary conversion.

The final component of the fact-oriented framework addresses the remaining fact-related step effective legal researchers take before commencing the library phase of their research: if possible, organizing into a sensible order for research the legal issues raised by the facts.[113] Experienced researchers realize that not all legal issues in a given research problem carry equal weight and that sound legal research evolves most readily from establishing a hierarchy of issues for research. Beginning legal researchers need to develop a similar recognition that issues in a legal problem exist in relationships to one another and that the existence of these relationships implies the likelihood that starting research with certain issues will prove more fruitful than starting with other issues.

The particular issues a researcher faces will differ, of course, from problem to problem. The relationships among issues, however, tend to fall into recurring patterns. For example, the fact analysis and issue identification steps often suggest a relationship consisting of "a natural [research] progression from considering whether the plaintiff can commence and maintain a suit; to whether (if so) the defendant has a successful defense; and, finally, to the remedy the plaintiff may ultimately seek if he prevails against the defendant."[114] Thus, a research problem might involve a potentially dispositive issue (such as a party's lack of standing to bring an action or the running of a statute of limitations), coupled with several nondispositive issues; where this relationship exists among issues, a researcher will generally find it most helpful to start with the potentially dispositive issue.[115]

---

113. *Id.* at 37-38.
114. *Id.* at 38.
115. *Id.* at 37-38.

Legal research instruction should develop the ability to recognize significant research relationships among issues, so that, when possible, students can organize their issues for effective and efficient work in the library phase of legal research. Early in a legal research course, students may find it difficult to arrange their issues in a logical order for research, but through practice, students develop proficiency in organizing issues, just as they improve their other research skills through practice. Moreover, students need to understand the step of issue organization if they are to have a complete grasp of the research process: "[a] student who cannot distinguish the important issues from the lesser ones cannot organize an effective research strategy."[116]

In summary, the multifaceted, fact-oriented framework accomplishes several goals, while consistently highlighting the continuity of legal research as a process. First, the framework focuses students' attention on the point at which the legal research process actually begins—not with research in law books, but with gathering facts. From that starting point, the framework guides students through the ensuing fact-related steps that precede research in the law library: analyzing the facts in order to select descriptive words for gaining access to law books; identifying the legal issues the facts raise; and organizing the issues for research. By consolidating the fact-related steps of legal research and making explicit the connection between the facts of a research problem and the student's subsequent research in law books, the framework overcomes the tendency of legal research instruction to gloss over the tasks by which researchers lay the necessary foundation for the library phase of legal research.[117]

Moreover, in addition to improving students' understanding of the fact-related research tasks as part of the legal research process, the fact-oriented framework further aligns the structure of legal research instruction with the structure that characterizes substantive courses. As already noted, professors in substantive courses teach the process of functioning like a

---

116. Shapo, *supra* note 26, at 727.

117. Of course, once students do some research in law books, they often think of new fact words or discover new issues that require research. Similarly, as their research in law books familiarizes them with the kind of facts that are relevant in the subject area they are researching, students frequently reassess the relative significance of the facts on which they initially focused and may even conclude they need to go back and gather additional facts. As a result, students quickly realize (and the instruction should make explicit) that gathering and analyzing facts and identifying and organizing legal issues are tasks that generally will be repeated throughout their research efforts.

Nonetheless, students still need to perform the fact- related tasks at the outset to have an initial direction for researching in law books; the more carefully students think through the facts and issues in their research problems before entering the library, the more successful they are apt to find the library phase of their research.

lawyer with respect to problems in specific areas of law and provide students with frameworks for solving those problems. Similarly, the fact-oriented framework in process-oriented instruction brings into the legal research course an essential component of the research problem-solving process and provides an appropriate framework for understanding this component. Thus, as in a substantive course, the framework induces students to respond to course material the way lawyers would under real-world conditions.

C. Framework 3: The Library Phase of Legal Research

Once they have converted the raw facts of their legal problems into a form that permits research in law books, students need to understand the tasks that constitute the library phase of legal research. Because all research in the law library involves three steps—finding the law, reading the law, and updating the law—the third framework conceptualizes the library phase of the legal research process in terms of these three related tasks.

Like the two preceding frameworks, the "library phase" framework is designed to contribute to a functional understanding of legal research. To carry out a legal research project, students need to know how to locate possibly relevant law (*i.e.*, find the law), how to evaluate the law they have found to determine its actual relevance to their research problems and to place authorities in their broader legal context (*i.e.*, read the law),[118] and how to ensure that the relevant law they have found is current (*i.e.*, update the law). The third framework explains how to accomplish each of these steps, as well as how the steps relate functionally to one another.[119]

At each step, of course, a legal researcher uses certain law books. Consequently, in order to find, read, and update the law, students need to know which books to use, and how to use them, in performing each of these three tasks. The third framework provides this functional understanding of law books by presenting bibliographic information in the course of explaining when and how to use the books in the legal research process.

Resolving the recurring problem researchers face during the library phase of legal research—*i.e.*, deciding which law book to select at any given point in their research—requires a creative response based on understanding the legal research process, rather than on descriptions of law books. Because successful legal research depends on making suitable

---

118. *See* C. WREN & J. WREN, *supra* note 11, at 79-80, 89-90.
119. *Id.* at 41-122.

choices among the available books, the third framework also clarifies how experienced researchers make their selections.[120]

Starting with the finding step of legal research, the framework shows that researchers select books by choosing from among several possible research approaches.[121] Instruction through this framework therefore

120. This approach contrasts with the traditional bibliographic approach, in which "[s]tudents in their first year, given a good nose-rubbing in the reporter systems, the *American Digest*, *Corpus Juris*, statutes, *Shepard's Citations* and the selected case series, emerge with a somewhat kaleidoscopic knowledge of basic research materials and a morbidly hopeful pride in being able to distinguish among them." *Teaching Legal Writing*, *supra* note 10, at 354-55 (remarks of Dr. Sheldon D. Elliott).

121. In finding the law, a researcher can, of course, start with either primary or secondary authorities, depending on how much the researcher knows about the area of law being investigated. C. Wren & J. Wren, *supra* note 11, at 65. In teaching legal research, the question arises whether students should begin developing their research skills by using primary or secondary authorities. Teaching first about using primary authorities avoids significant pedagogical drawbacks that arise when students begin their library research training in secondary materials. Starting with secondary materials rests on the questionable assumption that students should acquire their first taste of legal research by working with sources that have been called "the least authoritative, the least reliable, the most misleading and the most overrated" of legal research sources. Schmid, Book Review, 8 Utah L. Rev. 160, 162 (1962-63).

In addition, to become effective legal researchers, students must learn to think more critically, more creatively, and more independently than they probably have ever had to think before—in short, students have to learn to think for themselves and to create their own analyses and syntheses out of primary authorities. *See, e.g.*, Wangerin, *Skills Training In "Legal Analysis": A Systematic Approach*, 40 U. Miami L. Rev. 409, 442 n.52 (1986). Instruction that prematurely focuses on secondary materials undermines the development of the intellectual independence and motivation law students need to cultivate.

To develop an ability and predilection to think critically and creatively, students need to break as quickly as possible from the seductive practice of relying on the derivative kinds of resources they used as undergraduates. High school and undergraduate college students rarely work with primary sources in their studies, generally relying instead on others' interpretations of primary materials. Introducing law students to the library phase of legal research through secondary sources simply reinforces this undergraduate experience of relying on others to provide a correct analysis. Moreover, not only is it undesirable to perpetuate this reliance, it is unnecessary to do so based on a notion that students will find the changeover difficult. With the "legal system orientation" framework having already introduced students to primary sources of law, beginning the library phase of research instruction with primary authorities flows naturally, moving students quickly and easily through the necessary transition into a system that relies principally on primary sources and independent thinking.

Instruction that starts with secondary materials must also deal with the problem of students attaching too much significance to resources that are not "the law." Schmid, *supra*, at 162 (commencing legal research instruction with secondary sources "run[s] the risk of adding to the already undeserved reliance placed upon these secondary aids which can be so disarmingly deceptive to the user who is not aware of their capabilities and their limitations"). Instructors who teach first about secondary materials can admonish students not to overvalue secondary materials. *See, e.g.*, C. Kunz, D. Schmedemann, C. Erlinder, M. Downs, C. Greene, A. Bateson & K. Millard, The Process of Legal Research: Teacher's Manual 2 (1986) (noting the need to counteract the "common temptation of students unfamiliar with the law to accord treatises (and even dictionaries) respect beyond their weight"); *id.* at 5 (noting the need to curb students' "tendency to treat [secondary] sources of 'black letter law' as primary authority"). Despite warnings, however, students are apt to have difficulty treating secondary materials as comparatively less weighty when the teacher evidently considered them

teaches students the various approaches available for finding the law.[122] Along with teaching these research approaches, the framework familiarizes students with the factors that influence the selection of one approach over another[123] and provides information about how to use the books suitable for each approach. The framework then continues through the remaining steps in the library phase (reading and updating), showing students which resources to use at each step and how to use them. As a result of this instructional technique, students learn how to actually do legal research, and they acquire as much information about the books as they need in order to put the books to use.

The third framework thus aims at creating self-sufficient legal researchers. Its approach recognizes that in the world outside the classroom, clients do not normally walk into lawyers' offices and say, in effect, "Here's my problem—and, by the way, here is a list of the books you should use at each stage of your research." Instead, of course, the client presents the problem and leaves the lawyer the task of developing a problem-solving approach, including the selection of appropriate law books in which to do research. By emphasizing the purposes for which researchers use law books, and then tying in the appropriate bibliographic information with each purpose, the third framework enables students, like lawyers, to link on their own the necessary books with the research steps they are trying to accomplish.

---

important enough to serve as the students' first formal contact with the law library. Schmid, *supra*, at 163 (suggesting that introducing students first to secondary materials can unintentionally place an "excess imprimatur of approval" on these materials). In addition, students may find it difficult to heed admonitions to place greater reliance on another class of materials (*i.e.*, primary authorities) the legal research instruction has not yet addressed.

A final drawback of introducing students to secondary materials before familiarizing them with primary law is potential conflict between legal research teachers and those who teach substantive law courses. Undoubtedly, professors of substantive law courses do not appreciate the effects of a legal research course that undermines their efforts to develop students' analytic skills through the case method rather than through hornbook instruction. As Professor Morse has asked,

> [w]as not the case method model intended to isolate students from secondary sources of the law in order that they learn the analytical method of appellate decision-making? Why then destroy this pedagogical aim by allowing legal research to be approached as "how to use a hornbook" at the beginning of the first year?

Morse, *supra* note 3, at 233 (footnote omitted).

122. C. WREN & J. WREN, *supra* note 11, at 45-76. *See also id.* at 77-78 (checklist of approaches for finding the law).

123. In terms of developing a research strategy, "[w]hat will work best will depend on the particular matter being researched, as well as on how much or how little [students] know about the subject [they] are researching." *Id.* at 77. For example, if a researcher already knows the citation of a relevant authority (obtained, perhaps, from a teacher or by reading an opposing brief), selecting the "known authority" approach may prove most helpful. *Id.* On another occasion, a researcher might have a problem whose solution turns on the definition of a word or phrase; selecting the "words and phrases" approach would likely prove the most appropriate way to start. "As [students] gain experience in doing legal research, [they] will become increasingly adept at working the available approaches into an overall strategy for solving legal problems." *Id.*

In adopting a teaching approach organized around research functions rather than bibliographic descriptions, the third framework reflects a fundamental structural difference between process-oriented legal research instruction and bibliographically oriented instruction: the process-oriented approach significantly shifts the emphasis and timing in the presentation of the material covered.[124] As discussed earlier,[125] although the process-oriented approach still covers a certain amount of bibliographic description, the approach can present less of this kind of information because of the shift in emphasis away from describing law books and toward explaining the process of using the books. In addition, the process-oriented approach shifts the timing of the presentation of the bibliographic information it does cover: in a bibliographic approach, the professor typically catalogs the bibliographic characteristics of a particular law book, presents a similar inventory of bibliographic features of another book, and repeats this exercise seriatim until finishing a descriptive survey of the law library; by contrast, in the process-oriented approach, the professor presents the bibliographic information about books in the course of explaining the actual process of researching legal problems and teaching when and how to use law books to perform each step in the research process.[126]

By organizing legal research instruction around the steps in the library phase of legal research, the third framework implements the important principle of communication that the medium should advance the message: the medium (*i.e.*, the context for the course's instructional content) reflects and reinforces the message sent by the instruction, namely, that legal research is not a collection of law books, but a series of steps for using the books.[127] The context of legal research instruction organized along bibliographic lines, on the other hand, actually obscures the research process by focusing nearly exclusively on what law books look like.

By patterning its structure after the process by which researchers conduct their work in law books and by providing information about books within that construct, the third framework in process-oriented instruction also completes the alignment with substantive courses begun by the preceding frameworks. Just as the frameworks that inform the

---

124. This shift and, therefore, the contrast between the two approaches appear most vividly in connection with the third process-oriented framework because the third framework presents the most bibliographic information, and bibliographic information is the almost exclusive focus of typical bibliographically oriented courses.

125. *See supra* p. 18.

126. This shift in emphasis and timing is analogous to "'picking up the other end of the stick,' a process that involves 'handling the same bundle of data as before, but placing them in a new system of relations with one another by giving them a different framework.'" T. KUHN, THE STRUCTURE OF SCIENTIFIC REVOLUTIONS 85 (2d ed. 1970) (footnote omitted).

127. *See supra* note 35 and accompanying text.

structure of substantive courses give students a systematic way of filtering course material (*i.e.*, individual legal principles) in ways that make the information usable for problem-solving, the "library phase" framework serves as an organizational device for assimilating bibliographic information in ways that make the law books, and therefore the law library, comprehensible and accessible.[128]

Finally, by formulating the library phase of legal research as a series of research steps, the third process-oriented framework offers another advantage. The framework underscores the need to teach an aspect of legal research too frequently slighted in a bibliographically oriented teaching approach: reading (*i.e.*, evaluating) legal authorities as an integral part of legal research.[129] The logical sequence of the "library phase" framework (finding, reading, and updating the law) makes clear that something has to occur between finding the law and updating it. A legal research course that fails to include instruction about the intervening step of reading the law deprives students of a complete understanding of how to do legal research.[130]

Bibliographically oriented legal research instruction typically neglects the reading, or law-evaluation, component of legal research. In a legal research course taught along traditional bibliographic lines, students learn what law books look like and how to physically locate material within the books (for example, how to find a page referenced in a legal citation).[131] In addition, students usually learn the mechanical aspects of how to update authorities through such resources as *Shepard's* citators.[132] Through this kind of instruction, which presents legal research as merely an array of "treasure hunt" exercises, students come to perceive successful research as obtaining identifiably correct answers by carrying out mechanistic routines requiring little or no thought.

In this situation, most students will correctly sense their instruction has

---

128. *See supra* pp. 20-21.

129. *See supra* note 118 and accompanying text.

130. Professor Julius Marke recognized the need to teach reading as part of legal research when he made the following comment:

> As librarians, we should recognize that there is much more involved in legal research than finding a particular case; there is the legal analysis involved, the significance of that case. We may think that by a mechanical approach to the processes of research we are accomplishing our role, but there is much more involved than that. We are taking, I believe, a simplistic approach to this whole problem . . . .
>
> . . . How do you analyze your problem and use these materials in arriving at an understanding and a recognition of a philosophy behind what you are doing? How do you take all the law that appears to be against you and prove to a court that you can do otherwise with it? I think this is what the essence of legal research is.

Legal Bibliography, *supra* note 49, at 433-34.

131. This is the narrow meaning of "using law books." *See supra* p. 11.

132. *See supra* note 131.

left a major gap in their understanding of how to use the law library effectively, though they may not fully grasp or be able to articulate the reason for their unease. Experienced researchers, of course, would immediately recognize the cause of the problem: mechanically finding and updating legal authorities are pointless activities without the reading component of legal research.[133]

Until researchers read the authorities they have retrieved from the library shelves, they cannot know whether they have found the law they seek and cannot tell whether they should continue their search.[134] They haven't found the law; they have only found law books. Similarly, until researchers read the authorities they have located, they cannot determine the authorities' significance and therefore cannot update the law in any sense that is worthwhile for legal research purposes. They update not the law, but legal citations.

In short, because effective legal research requires researchers to know how to read (*i.e.*, evaluate) the authorities they find, a method of legal research instruction that neglects to teach about reading the law fails, by definition, to teach legal research.

In light of the integral character of reading in the legal research process, the failure of typical bibliographically oriented legal research instruction to teach about this step is incongruous. Perhaps the omission derives from a belief that students' reading of the law in their substantive law courses addresses the skill adequately for legal research purposes.[135] This belief misses the mark, however. Courses on substantive law focus students' attention on thinking about legal doctrines relating to specific subject matter; although the courses require students to engage in various techniques for reading the law,[136] the instruction rarely, if ever, explains *how* to develop effective reading skills.

Moreover, the evolution of students' reading skills ordinarily occurs at too slow a pace in their substantive law courses to meet the demands of assignments (such as doing research for an analytical letter to a fictitious client or for a memo to a senior partner) that they will encounter relatively

---

133. "Research competence is predicated not only upon a working knowledge of the form and function of law books but also upon several other skills including the ability to analyze a legal problem for its operative facts and to frame issues of law, to identify the authoritative materials sought for and to evaluate them when they are found." Ellegaard, *supra* note 43, at 187.

134. At best, they can only know whether they have completed a "go-fetch" finding exercise. *See supra* note 14 and accompanying text.

135. The legacy of Frederick Hicks's efforts to segregate instruction about law books from instruction about their use no doubt also helps explain the omission. *See supra* pp. 12, 26-33.

136. These techniques include, for example, analyzing the facts of a legal authority to determine how narrowly or broadly to interpret it, or identifying the factual elements that trigger a statute's application. *See* C. Wren & J. Wren, *supra* note 11, at 79-94 (explaining reading techniques).

early in their legal research courses.[137] Students learn effective reading techniques more slowly through inference (as occurs in substantive law courses) than through instruction that expressly explains to students the purposes, techniques, and thought processes involved in reading the law. By teaching about reading techniques, legal research instructors can accelerate students' development of effective reading skills and help ensure that students hone these skills at a pace that better suits the needs of a legal research course.[138]

D. Summarizing the Frameworks

In legal research, each fact and legal authority should, like the dots of color in a pointillist painting, cumulate into a larger, coherent picture. However, for students who lack a systematic way of understanding research as a process for problem-solving, the facts they work with and the authorities they examine fail to resolve into a unified problem-solving response. These students tend to wander the law library aimlessly, not seeing how various authorities relate to one another or to the research problem; any progress they make occurs more by chance than design.

The three frameworks in the process-oriented teaching approach are structured to correct this situation. Rather than expecting students to back-engineer from descriptions of law books to the necessary understanding of research steps (a virtually impossible exercise), the frameworks focus directly on legal research as a step-by-step process. Book descriptions, emphasized less than in a bibliographically oriented teaching model, are provided in the course of explaining the roles the books play in the legal research process.

Students taught through this approach acquire, in practicable bites, a comprehensive and functional view of legal research. This view begins with a framework that orients students to the legal system by describing the institutions that create law and the type of law each institution creates, and then linking each type of law with the books in which the law is found. In addition, by conceptually organizing primary authorities into just a few generic categories, the "legal system orientation" framework enables students to immediately classify for research purposes a large portion of the law library's collection.

---

137. Teaching effective legal research calls for written assignments in which students engage in legal analysis, rather than just responding to short-answer, fill-in-the-blank type of "go-fetch" exercises. Morse, *supra* note 3, at 256; Shapo, *supra* note 26, at 725-27.

138. *Cf.* Ellegaard, *supra* note 42, at 187 (noting the problem that occurs when legal research teachers must rely on substantive law courses to train students in analytical skills needed for doing research: "The scope of effective research training is necessarily limited by the extent to which the student has previously been instructed in these other skills.").

The second and third frameworks build on this base of knowledge by explaining the steps in legal research. The second framework orients students to the critical importance of facts as the starting point for legal research; in doing so, the fact-related framework shows students how to break a research problem into its elements and assess the problem in a way that will allow the research to proceed to the library phase. The third framework completes the explanation of legal research by breaking the library phase of research into its component parts of finding, reading, and updating the law.

Throughout, the three process-oriented frameworks focus students' attention on legal research from the essential perspective long neglected (indeed, often excluded) by traditional bibliographic instruction: the perspective of legal researchers, who recognize legal research as a process in which law books are just tools in the search for solutions to legal problems.

Through the frameworks, students come to understand the creative nature of the legal research process and learn how to fashion effective problem-solving strategies for using the law library. Thus, process-oriented legal research instruction results in self-sufficient researchers. Students discover how and when to draw on the various law books in doing their research and how to integrate the books into an overall research strategy.

VI. Benefits of Process-Oriented Instruction

As with any course, students and teachers bring to a legal research course certain needs and interests. These concerns affect how students and teachers respond to the course material and influence whether the course goal is achieved.[139] Naturally, a legal research course that satisfies students' and teachers' needs and that addresses their interests will enjoy a greater likelihood of success. The needs and interests of students and teachers thus serve as the backdrop against which to develop the course, and they provide a standard against which to evaluate the effectiveness of a particular teaching approach.

Previous sections of this article touch indirectly on the concerns of students and teachers in legal research courses. This section looks directly at these factors, examining them first from the perspective of students[140]

---

139. *Cf.* Redmount, *supra* note 34, at 151-72 (discussing factors affecting students' and teachers' responses to a learning experience). These factors "are at least filtering agents through which substantive learning can take place. They may even be the determinants of effective learning." *Id.* at 151.

140. "Effective teaching . . . requires that the teacher remember what it is to be a law student." Newell, *Ten Survival Suggestions for Rookie Law Teachers*, 33 J. LEGAL EDUC. 693, 696 (1983). *See also* Redmount, *supra* note 34, at 153 n.47.

In some cases, recognizing the needs of their audience may require teachers to undergo a "transformation of vision" that sees the course as much from the students' perspective as from the

and then of teachers.[141] We have selected the factors that appear to bear most significantly on the probable success of a legal research course.

A. The Students' Perspective

The problem of information management. As in any other academic course, students in a legal research course face the fundamental problem of figuring out how to manage the information presented—how to take in the

---

teachers'. *Cf.* Calhoun, *supra* note 35, at 510-11 (suggesting that evolving from a student into a lawyer requires a "transformation of vision" that results in the student becoming "an inhabitant of the [lawyer]'s world, seeing what the [lawyer] sees and responding as the [lawyer] does") (quoting T. KUHN, *supra* note 126, at 111) (footnotes omitted). In the case of a legal research teacher, the necessary transformation reverses the usual progression, but the purpose remains the same: to see the world from a different perspective.

141. As teachers, law librarians have had a particularly close identification with the bibliographically oriented teaching approach. *See Teaching Legal Writing*, *supra* note 10, at 354 ("Traditionally, the course in legal bibliography has been the law librarian's baby.") (remarks of Dr. Sheldon D. Elliott). A question may therefore arise about whether librarians can make the transition to become teachers of process-oriented legal research courses. The purpose of this article is to describe a way of looking at legal research instruction, not to suggest who among several categories of potential teachers should teach the course. Certain observations might prove useful, however, to those considering the role law librarians can play in process-oriented research instruction.

Recent surveys indicate an emerging trend away from having law librarians teach legal research or research-related courses. *See* Shapo, *supra* note 26, at 725. Many law librarians welcome this development because "managing a law library is a full-time job, which requires 100 percent of the law librarian's attention and effort." Trelles & Bailey, *Autonomy, Librarian Status, and Librarian Tenure in Law School Libraries: The State of the Art, 1984*, 78 LAW LIBR. J. 605, 650 (1986). Twenty-seven per cent of head law librarians responding to a survey conducted by Trelles and Bailey answered "no" to the following question: "[I]n view of the responsibilities incumbent upon a head law librarian, do you feel it is desirable to carry teaching responsibilities?" *Id.* at 649 (italics omitted). Many other law librarians, though, remain committed to teaching legal research, *id.*; *see generally* Danner, *supra* note 14, and these librarians confront a second trend: a movement toward teaching research within a course that combines legal research and legal writing instruction. *See* Shapo, *supra* note 26, at 724-28. Consequently, if librarians are to retain a significant role in teaching legal research, they "must be concerned with developing ways to teach research effectively within their schools' overall writing programs." Danner, *supra* note 14, at 600. This means librarians must adopt more practical teaching approaches than describing law books and must provide students with instruction they can apply in actually doing legal research.

Librarians possess teaching experience they can readily transfer to a process-oriented legal research course. Ironically, many librarians teach formal legal research classes by providing bibliographically oriented, narrowly focused instruction punctuated by impractical "treasure hunt" assignments, yet adopt a startlingly different—and more effective—teaching approach when asked by confused library users for assistance on a one-to- one basis. When asked for advice, most librarians intuitively respond with a process-oriented approach. Librarians typically do not answer perplexed researchers' questions by enumerating bibliographic characteristics of law books. Rather, librarians try to determine what step in the research process the confused researcher is at, or should be at, and then suggest which books the researcher should use for that stage of the research process. To a large degree, the goal of process-oriented legal research instruction is to make this response the norm throughout the course.

Of course, process-oriented instruction also imports into the research course some components (*e.g.*, analyzing facts to formulate the legal issues that require research, evaluating the significance of legal authorities) that typically are not covered in courses taught along bibliographic lines. These features of legal research instruction, however, should not hinder librarians who want to teach legal

information and then remember it. This problem of absorbing and retaining information often presents itself as simply a problem of information overload; in a legal research course, the difficulty is frequently cast in terms of teachers conveying more bibliographic information than students can handle in light of the limited amount of time available to spend on the course.

The problem of information management results, however, from more than just the conflict between the time available for study and the quantity of course material presented. Comparing a typical bibliographically oriented legal research course with a typical substantive law course illustrates this point. Both kinds of courses present students with substantial quantities of information; if anything, substantive courses present information in larger quantities and of greater complexity. Yet, despite time constraints, students manage to deal successfully with the material in their substantive courses, while legal research teachers (and, eventually, employers) complain that students fail to learn how to do legal research.[142]

The difference in these outcomes indicates that some other factor contributes to students' success at absorbing and retaining course information. Most likely, their success is a function of how useful the information is to them.[143] As a general matter, students in substantive courses perceive the usefulness of the course material: they sense the course is preparing them to respond effectively in their professional careers. This perception prompts students to rise to the challenge of figuring out how to manage the course material.[144]

---

research. The overwhelming majority of academic law librarians hold law degrees, *see* Trelles & Bailey, *supra*, at 645, and a substantial number of them teach substantive law courses, *id.* at 649. With this training and experience, law librarians should be able to teach all aspects of the research process.

142. *See supra* note 26.

143. "Learning is achieved through first the motivation and then the capacity of the student. Motivation is the vehicle that provides drive, inquisitiveness and persistence. . . . Subject matter, then, must first seem to be or must become important and relevant to the student." Redmount, *supra* note 34, at 165 (footnote omitted). In addition,

> [s]ubject matter material . . . needs to serve motivational or directional experience. This emphasizes the importance of relevance and consequence. These are the dimensions and the devices by which the student can identify and understand what is to be learned. He needs "learning handles" to aid him in the exercise of his motivational dispositions and logical capacities, and thereby produce a meaningful and effective learning result. He more readily and skillfully perceives relationships, analyzes connections, orders results and transfers elements of learning if he can see or already appreciates substance and importance in the materials he is dealing with. Without these conditions and this experience, learning may not take place or it may prove to be short-lived or decorative.

Id. at 140. *See also* Sadow & Beede, *supra* note 1, at 29 ("It has been our experience (as students and as teachers) that students are not interested in learning how to use indexes and other access tools until they can see very definite reasons to do so.").

144. Grades, of course, also can motivate students to try to succeed at absorbing and retaining course information, and many legal research teachers in ungraded courses believe graded status would

By contrast, students in a typical bibliographically oriented legal research course quickly recognize the instruction's lack of utility: they sense that course material consisting largely or entirely of descriptions of law books does not move them appreciably closer to becoming competent legal researchers,[145] that such a course is better suited to future librarians than future lawyers.[146] Students discern early on that the course, by not providing a comprehensive understanding of the research process, fails to give them what they want and need. As a result, many students essentially give up on bibliographically oriented courses, going through the motions necessary to complete their research assignments but failing to learn effective research skills.[147]

---

result in improved student performance in learning legal research. *Cf.* Mills, *supra* note 3, at 345-46 (noting that legal research courses are often graded pass/fail, and concluding that students therefore work less diligently in the course than in courses with conventional grades). There is a split of opinion on the effect of grades, however. *See, e.g.*, Shapo, *supra* note 26, at 721 n.10 (noting the view that grades may inhibit learning by increasing tension). Speaking from experience in another academic discipline, Peter Elbow, professor of English at the University of Massachusetts at Amherst, observed:

> We can easily produce a kind of short-run motivation by emphasizing tests and grades. When students begin to slack off, it is tempting to say, "There's going to be an important test on this reading," or "I'm going to grade this writing and count it heavily." This yields a certain kind of behavior, but it doesn't yield lasting motivation—not genuine interest . . . that persists beyond the graded activity.
>
> . . .[O]ver-reliance on testing and grading actually saps motivation, since it makes students less likely to study under their own steam . . . when the teacher's back is turned.

Chron. Higher Educ., Sept. 16, 1987, at B3, col. 4.

In any event, many research courses already are graded, and the complaints about students' abilities to do legal research do not appear to exempt graduates of courses in which grades are assigned. Thus, although grades have an impact on student motivation, the basic usefulness of course material remains the underlying concern of students in deciding how to deal with course material. Even if legal research courses were all graded and weighted the same as substantive courses, there is no reason to believe students would learn legal research any more successfully so long as they perceive the courses as failing to teach them a useful lawyering skill. *Cf.* Morse, *supra* note 3, at 255 ("Criticism of legal skills programs usually centers on too little credit, low status for instructors, and too much work, but seldom do we ask ourselves what we are doing in this program and what relationship does it have to doctrinal analysis, policy, and process—the core of the core curriculum.") (footnotes omitted).

145. *Cf.* Carlson, Calvert & McConkey, *Innovations in Legal Bibliography Instruction*, 74 Law Libr. J. 615, 615 (1981) (noting causes of student dissatisfaction with legal bibliography courses).

146. *See supra* note 13.

147. The problem of students "tuning out" may be particularly acute in courses that purport to instruct students about problem-solving processes (*e.g.*, mathematics), but in fact fail to convey the actual process or its applications. *Cf.* Sandefur, *Mathematics Teachers Are Too Lazy to Change Their Ways; as a Result, Teaching Is Stagnant*, Chron. Higher Educ., Jan. 21, 1987, at 40, col. 2:

> Suppose that students took two years of grammar, one year of spelling, and one year of vocabulary in high school, then spent the first two years in college English studying the different types of symbolism used by authors, and finally, in the third year, got to read a novel.
>
> Of course this proposal is absurd. Most students following such a program would quit taking English long before they read their first book—but that is exactly how mathematics is taught. Instead of learning algebraic techniques while attempting to analyze a particular problem, students are taught the techniques first and the applications

A process-oriented method of instruction, through its series of frameworks for teaching the steps in legal research, substantially alleviates students' information management problem by rendering course material useful. This usefulness flows from the functional nature of the frameworks—from their direct focus on showing students how to relate course material to actually doing legal research. Because legal research is a process, instructional frameworks that explain legal research as a process will, almost inevitably, make course material more useful to students than will a teaching approach that does not teach legal research as a process.

In particular, with respect to learning the core bibliographic information presented both in traditional bibliographically oriented instruction and in process-oriented instruction,[148] the "library phase" framework in process-oriented instruction channels students' efforts into linking the information about law books with the information about the uses to which researchers put the books. As previously discussed, the framework accomplishes this by introducing students to a given bibliographic feature of a law book in the course of explaining the step in the legal research process at which the feature becomes useful to researchers; this treatment contrasts with that of a bibliographically oriented teaching approach, which would introduce the feature in the course of cataloging all the bibliographic features of a particular law book.

By thus investing legal research course material with a usefulness it would otherwise lack, process-oriented instruction increases the likelihood that, as in a substantive course, students will successfully manage the course material and rise to the challenge of mastering the skill the course is designed to teach.[149]

---

later. Because most students never reach a course in which applications are covered, they rarely realize how important math is. . . .

Most mathematical theory, such as calculus, was originally developed to solve concrete problems—the abstractions came later. However, we teach math as though it were the other way around. We teach abstractions first and discuss the concrete problem long afterward, if at all. Enamored of abstraction, we mathematicians have been leaving many of our students in the dark, with the result that a large portion of society has come to fear and avoid math.

148. As explained earlier, there is a common body of bibliographic information that would be taught under either approach, although the bibliographically oriented teaching approach places a greater emphasis on descriptions of law books and presents these descriptions in a different context. *See supra* p. 18.

149. In structuring a legal research course, it is also important to consider the information management system students resort to when a course does not supply one they consider effective. Ordinarily, students adopt the information management systems provided by their courses. If a course fails to provide a system that enables students to assimilate course material in a way they find helpful, they will resort to rote memorization as, in effect, a default system for information management. Rote memorization seems the only available response when, in bibliographically oriented legal research courses, students find themselves inundated with information about law books with little or no guidance for figuring out how to apply the information.

The recognition of the need to learn legal research and the expectation of learning it. Students realize they need to learn how to research legal problems, and they expect to learn this skill in their legal research courses. Too frequently, however, students finish a research course frustrated at not having learned how to make effective use of the law library.[150] This frustration is an almost inevitable result of instruction that focuses on bibliographic characteristics of law books at the expense of a clear understanding of the process in which researchers use those books.

The bibliographic focus of traditional legal research instruction and the attendant frequent failure of students to acquire necessary research skills emphasize the fundamental flaw in a bibliographic orientation: the approach does not actually teach legal research.[151] In contrast, by directing students' principal focus toward the legal research process instead of bibliographic features, a process-oriented teaching approach satisfies students' expectations by covering the appropriate subject matter for a legal research course—that is, legal research.[152]

Moreover, the characteristics of process-oriented instruction increase the likelihood students will actually learn legal research. An approach for teaching legal research should simplify the subject,[153] and one of the important characteristics of the process-oriented approach is simplicity. Process-oriented instruction achieves simplification by breaking down legal research into an easily understood sequence of steps—assessing the research

---

Rote memorization, however, does not help students figure out the usefulness for research purposes of the memorized information. *Cf.* Morse, *supra* note 3, at 256 (asking rhetorically, "[I]s drill work in a myriad of search tools helpful unless a student can relate the material to a research problem?"). In addition, heavy reliance on memorization inhibits the creativity needed to develop legal research strategies. Finally, although memorizing bibliographic information may enable students to complete their course assignments, students will forget the memorized information soon after the course ends because the information will have little or no practical value for them when they have to do actual legal research, as opposed to simply completing "a series of lectures, show-and-tell sessions, and drill exercises." *Id.* at 255. *See also* Redmount, *supra* note 34, at 154-55 ("Learning experience that has been clear, vivid, meaningful, of symbolic significance and consequential in some way to the student, entertains a better prospect of being stored in memory and accessible to retrieval."). Overall, the results of memorizing unimportant information aptly illustrate the comment of poet and Lord Chief Justice Sir John Davies: "We learn so little and forget so much." Davies, *Nosce Teipsum*, in SILVER POETS OF THE SIXTEENTH CENTURY 347 (G. Bullett ed. 1960).

150. *See, e.g.*, Carlson, Calvert & McConkey, *supra* note 145, at 615.

151. "There has been a great deal of dissatisfaction with [legal bibliography] courses among both students and faculty. . . . There is also some concern about whether these courses really convey the techniques of research." *Id.* at 615. *See also* Ramsfield, *supra* note 22, at 15 ("Slowly, American law schools are recognizing the need to comprehensively teach legal research. Much of this recognition responds to increased complaints from practitioners that the graduates they hire cannot do research.").

152. *See supra* note 12.

153. "Whenever we talk to fledgling law students about any thing as Gargantuan as legal research and writing, we must temporarily oversimplify." Gilmer, *supra* note 15, at 573.

problem,[154] and then finding, reading, and updating the law.[155] Thus, even though legal research is frequently complex, students in a process-oriented course have a manageable way to begin to master the skill.[156] (Of course, after students have gained experience with each of the steps, they will discover, and the instruction will clarify, that legal research does not always proceed in a linear series of steps;[157] the benefits of "temporarily oversimplify[ing]"[158] will have been achieved, however.)

In order to learn effectively, students also need a teaching approach that shows them how to apply course material when researching. As already described, process-oriented frameworks provide this explanation by organizing course material around the steps in legal research instead of around descriptions of law books.

---

154. Assessing the research problem means gathering and analyzing facts, followed by identifying and organizing legal issues.

155. In addition to helping students learn the steps in legal research, the simplicity of this organization of course material helps ensure that once students have learned the research steps, they will remember to perform each of the steps when researching. This organization is particularly helpful in reminding students they need to update their authorities.

156. Some may counter that the bibliographic teaching approach also has an organizational device, but this contention begs the question of the bibliographic device's appropriateness. From a researcher's perspective, the organizing principle for bibliographically oriented legal research instruction is inappropriate because it centers on familiarity with book characteristics, not familiarity with the research process.

The importance of selecting a suitable organizational device for teaching a subject can hardly be overstated. All education consists of an effort to simplify masses of knowledge through the use of paradigms. Moreover, as Thomas Kuhn has noted,

> something like a paradigm is prerequisite to perception itself. What a man sees depends both upon what he looks at and also upon what his previous visual-conceptual experience has taught him to see. In the absence of such training there can only be, in William James's phrase, "a bloomin' buzzin' confusion."

T. KUHN, *supra* note 126, at 113. Thus, employing an unsuitable paradigm distorts perception, precludes achieving the desired simplifications, and therefore obstructs learning.

157. "[L]egal research does not always proceed in a linear fashion with all your 'finding' preceding all your 'reading,' preceding all your 'updating,' and ending there." C. WREN & J. WREN, *supra* note 11, at 122. Rather, a researcher usually does "some finding and reading, then some updating, then some more finding and reading, followed by more updating, and so on," until the research has been completed. *Id.* Nonetheless, because of the importance of understanding the three steps and their relationships to one another, learning the research process proceeds most effectively when instruction isolates each step and focuses separately on the finding step, then the reading step, and finally the updating step. This approach provides students with an opportunity to understand and master each step in the process. Simultaneously, the approach provides a broad overview of the entire phase of legal research that occurs in the library, thus helping to ensure that students will understand not only each of the three steps, but how the steps interact and the need to perform each step in formulating and carrying out a comprehensive research strategy. *Id.* at 120, 122. Once students have mastered each step and learned its role in the research process, they will realize the research process is more cyclical than linear, and they can then fit the research steps to their own individualized needs when conducting research on their own. *Id.*

158. Gilmer, *supra* note 15, at 573.

Finally, because students learn legal research better when they have more opportunity for guided experience actually doing research, a teaching method should educate students about legal research as quickly as possible: the more rapidly students learn the components of legal research, the more time they will have to engage in research under an instructor's guidance.[159] Because process-oriented instruction teaches the process of conducting legal research, students need not waste time trying to guess how to do legal research; they can therefore get up to speed faster than through bibliographically oriented instruction.

The desire, and need, for a course that doesn't bore them. Students want a legal research course to hold their interest and challenge their abilities. In order to avoid the problem of "tuning out" and not learning at all,[160] students also *need* a legal research course that does not bore them.

Boredom, however, remains a serious—and intractable—problem for students in bibliographically oriented legal research courses. Instruction that focuses on book descriptions, instead of the research process, bores students because the information does not teach them the skills they expect and need to learn.[161] The rote nature of "treasure hunt" exercises adds to students' boredom; these drills do not challenge or involve students in the more stimulating activity of actually doing legal research.[162] And, because it does not teach legal research, bibliographically oriented instruction misses opportunities to increase students' interest by having them apply, in the context of a legal research problem, the analytical skills they have been honing in their substantive courses.

The divergence between students' experiences in their legal research courses and their substantive courses further aggravates the problem of students being bored by bibliographically oriented research instruction. Unlike substantive courses, which develop students' abilities to respond like lawyers, a bibliographically oriented legal research course, by not teaching legal research, fails to develop a comparable lawyering skill. This disparity becomes more acute as the academic year passes; as the contrast grows starker between the increasing sophistication of the skills students are developing in their substantive courses and the needlessly superficial

159. "Guided experience for the student, along a way known to the teacher, with a realistic objective before the student, will teach the types of literature, its contents, a method of research, and how to apply them via a writing." *Id.* at 571. The alternative—legal research instruction that leaves students to learn legal research on their own after graduating—compels students to learn the skill on the job, at great risk and expense to clients and lawyers alike.

160. *See supra* note 147 and accompanying text.

161. *See supra* note 151 and accompanying text. *Cf.* Danner, *supra* note 14, at 601 (a teaching approach that emphasizes the legal research process can more effectively keep students interested than an approach that emphasizes bibliographic detail).

162. *Id. See also* Morse, *supra* note 3, at 256.

character of their bibliographic legal research instruction, students' boredom with their legal research courses grows more serious.

Process-oriented legal research instruction can relieve this boredom. By teaching legal research (including how to assess the facts of a research problem, identify legal issues, and evaluate legal authorities), the instruction presents information in which students are interested and offers a challenge that more closely resembles the challenge of substantive courses.

Apprehension about the law library. For most, if not all, students, the law library appears imposing, an entity that (to paraphrase Shakespeare) "doth bestride the [student's] world / Like a Colossus."[163] Because the law library provokes considerable anxiety, which inhibits students' ability to learn and reduces their effectiveness and efficiency as researchers, students need a teaching approach that will help them overcome their apprehension.[164]

To allay students' uneasiness, an approach for teaching legal research should incorporate several features. Because students generally start out perceiving a law library's collection as unmanageably diversified, instruction early in the course should give students a way of classifying the collection into a few generic categories that will help make sense of the myriad of law books.[165] Next, a teaching approach should demystify the process of using law books: students should be taught techniques for figuring out how to select and use an appropriate book at a given point in their research.[166] Finally, moving students as quickly as possible toward self-sufficiency in the use of research techniques[167] will also alleviate anxiety: students will grow less apprehensive as they become increasingly competent at developing comprehensive strategies for doing legal research,

---

163. W. SHAKESPEARE, JULIUS CAESAR, Act I, scene ii, lines 134-35.

164. Novice library users

> make many guesses, they feel frustrated, they get angry, they complain, they feel alienated in the library environment, they speculate, fantasize, resist. Naturally, their effort is limited, spurious, incomplete, and fraught with error.
>
> . . . .
>
> A user's negative bias toward the library is automatic. . . . To succeed, learners must adopt a positive bias toward the library.

Jakobovits & Nahl-Jakobovits, *Learning the Library: Taxonomy of Skills and Errors*, 48 C. & RES. LIBR. 203, 206 (1987). *See also* Redmount, *supra* note 34, at 150 ("[A]n excess of anxiety, whether from personal or pedagogical sources, shatters confidence, incites fear and may inhibit or prevent performance.").

165. These categories enable students to classify law books into chronologically arranged and topically arranged publications, and to distinguish among the three types of law the books contain, *i.e.*, common law, statutory law, and administrative law. *See* C. WREN & J. WREN, *supra* note 11, at 3-19. *See also supra* pp. 34-36.

166. *See supra* pp. 42-44.

167. *See supra* p. 56.

at integrating new law books into their research strategies, and at responding successfully to new research problems.[168]

Instruction that focuses on the research process itself and how law books fit into that process can achieve these objectives and, in turn, diminish the anxiety that interferes with students using the law library effectively.

B. The Teachers' Perspective

Ideally, an approach to teaching legal research will satisfy teachers as well as students. Such an approach will offer teachers an effective way to organize course material for presentation to students and will result in a course that is doctrinally satisfying, intellectually interesting, and academically respectable.

A process-oriented approach to teaching legal research gives teachers a way to organize course material effectively. By establishing themes based on the research process, the frameworks described earlier in this article serve as touchstones for deciding what information is relevant to the research process. Viewing potential course material through a process-oriented lens yields the realization that much information covered in typical bibliographically oriented research courses is unnecessary for an understanding of how to do legal research.[169] Organizing a course around the legal research process offers teachers a new standard for critically evaluating course material and enables teachers to excise material that might otherwise seem necessary but in reality does not advance students toward greater competence in doing legal research.[170]

---

168. "To succeed, learners must . . . derive satisfaction from their growing ability to think and act like . . . [an] expert user." Jakobovits & Nahl-Jakobovits, *supra* note 164, at 206.

169. *See, e.g.*, Mills, *supra* note 3, at 346 ("Although we would like to see every law student have the research skills of an experienced law librarian, that is hardly realistic and actually unnecessary.").

170. Excluding material from the course may take courage and confidence on the teacher's part. In any course,

> [t]here is a tendency to lecture so that not even the smallest tidbit of information is lost to posterity. . . . The point, obviously, is not that it is objectionable for a teacher to be knowledgeable. Effective teaching, however, requires that the teacher remember what it is to be a law student. Would all this information be useful? Understandable? Interesting? At least as much teacher time should be devoted to developing effective teaching methods as to mastering the subject.

Newell, *supra* note 140, at 696 (footnote omitted).

Effective teachers in substantive courses recognize they cannot teach the entire body of their subject matter, and they do not even try to do so. *See, e.g.*, Achtenberg, *supra* note 10, at 223 ("No property professor would expect his course to teach all of property law in one year."). Instead, professors of substantive courses select the essential material that will provide students with a solid basis for continuing the study of the subject throughout their careers. A standard for screening out potential course material is especially crucial in a legal research course because of the overwhelming and constantly increasing number of law books. "[T]he amount that law students must be taught grows in

By pruning unnecessary material and organizing the remaining material around the steps in legal research, teachers will find the course easier to teach. As in teaching any process, presenting the information in a way that tracks the process provides a natural flow more conducive to teaching as well as learning. Moreover, because students learn legal research more quickly when the course material tracks the research process, teaching also proceeds more quickly. As a result, teachers will have more time to delve deeper into areas traditionally slighted in research courses because of time constraints,[171] to work individually with students,[172] to develop and refine stimulating research problems,[173] and (for law librarians who teach research courses) to devote to managing the law library.[174]

In addition to making legal research easier and faster to teach, the process-oriented approach can address the status problem that plagues the research course and those who teach it. Under a bibliographic approach, legal research sits outside the academic mainstream for two reasons previously discussed.[175] First, in contrast to substantive courses, bibliographically oriented legal research courses lack conceptual frameworks relevant to the subject the courses should be teaching (*i.e.*, the research process).[176] Second, traditional bibliographic instruction differs from other courses in the law school curriculum by failing to teach a lawyering skill: in one guise or another, traditional bibliographic legal research courses

---

geometric proportions (at least in the view of the law librarian) and one has visions of everybody getting farther and farther behind in the race to master access to all that information." Mills, *supra* note 3, at 348.

171. For example, one area often neglected because of lack of time is the legislative history aspect of statutory research. This neglect may explain, at least partially, why researchers often "feel that legislative history research is virtually impossible to do." Johnson, Book Review, LEGAL INFO. ALERT, July-Aug. 1986, at 8, col. 2.

172. *See supra* note 159 (noting the importance of providing students with "guided experience" in legal research).

173. *See, e.g.*, Danner, *supra* note 14, at 602. Professor Danner suggests that one way to promote students' interest in research assignments

> is to develop [the assignments] around a factual situation that poses enough analytical challenge to interest the students and is complex enough to require comprehensive research and the use of a variety of sources. Carried out over several weeks of classroom sessions and assignments, this approach can inject life into a set of canned exercises . . . .

Id.

174. Process-oriented legal research instruction offers law librarians a further time-saving advantage: they should find themselves answering fewer basic research questions because students will be more proficient in doing research and understand the law library better.

175. "You realize that among many of your colleagues a long-term commitment to legal writing and research makes you suspect as an incompetent or a borderline crackpot. That course is usually 'reserved' for the man who has the least seniority." Achtenberg, *supra* note 10, at 218 (quoting a law school dean). *See also* Morse, *supra* note 3, at 233 (noting that "respectable faculty members insist [skills courses] should not be a part of the case method analysis core curriculum").

176. *See supra* pp. 20-21.

amount to little more than tours of the law library, conducted in a way that makes them more useful to would-be law librarians than to would-be lawyers. So long as legal research courses suffer from these deficiencies, students who take the courses and professors who teach substantive subjects will continue to hold the instruction in low regard.

Meaningful improvement in the status of the legal research course will not occur until the course more closely emulates substantive courses in terms of structure and purpose.[177] By eliminating the intrinsic pedagogical anomalies of the bibliographic approach, process-oriented instruction creates the conditions for the legal research course to enter the academic mainstream: the process-oriented frameworks bring a functional, conceptual coherence to legal research as an academic discipline and result in the legal research course, like other law school courses, teaching a lawyering skill. Once students and faculty see that the legal research course performs the same kind of role as other courses in the curriculum, legal research teachers are more likely to find the status of their courses rising within the academic community, and their own status rising as well.

Recasting the legal research course to resemble other academic courses by teaching legal research as a problem-solving process yields a final benefit for legal research teachers: by offering a more dynamic intellectual experience, the course becomes more interesting to teach. Guiding students toward an understanding of how researchers effectively carry out research as a comprehensive process under realistic conditions presents an intellectually engaging (and rewarding) experience.

VII. Conclusion

Since the appearance of bibliographically oriented legal research courses more than seven decades ago, the ineffectiveness of the bibliographic focus has become increasingly apparent. Moreover, the structural flaws in the bibliographic teaching approach have resulted in a course that has existed as a curricular anomaly since its inception. Despite these drawbacks, the bibliographic approach remains the dominant influence in courses nominally devoted to instilling research skills in students.

Improving legal research instruction requires recognizing and rejecting the erroneous assumptions that have guided the development of bibliographic legal research courses. Students do not need instruction that

177. "Criticism of legal skills programs usually centers on too little credit, low status for instructors, and too much work, but seldom do we ask ourselves what we are doing in this program and what relationship does it have to doctrinal analysis, policy, and process—the core of the core curriculum." Morse, *supra* note 3, at 255 (footnotes omitted).

concentrates their attention on detailed explanations of the characteristics of law books. Students do not—indeed, cannot—learn legal research through such instruction because legal research is not a collection of law books. Legal research is, rather, a series of steps in the course of which a researcher develops a comprehensive strategy for selecting appropriate resources that may yield a solution to a legal problem.

Legal research instruction needs a new emphasis—a shift in focus from the books to the ways researchers use the books, a transition from the teaching of legal bibliography to the teaching of legal research. Because legal research is a process, the process is what students need to learn and the process is what legal research courses ought to teach.

Errata

for

"The Teaching of Legal Research"
80 Law Libr. J. 7 (1988)
by Christopher G. Wren and Jill Robinson Wren

Footnote 2 -- should cross-reference footnote 54 instead of footnote 53

Footnote 5 -- should cross-reference footnote 41 instead of footnote 40

Footnote 8 -- should cross-reference footnote 151 instead of footnote 149

Footnote 55 -- should cross-reference footnote 54 instead of footnote 53

Footnote 138 -- should cross-reference footnote 43 instead of footnote 42

VERALEX®

Interactive Video Library

A New Dimension in Legal Training

Sensing when to object. Thinking on one's feet. Knowing the right answer instantly when the judge asks, "What is the basis for your objection?" Some skills can't be learned in the classroom. And learning in the courtroom can be learning too late.

Solution: VERALEX Interactive Video Library, interactive videodiscs which teach legal skills by *simulating real-life lawyering situations.*

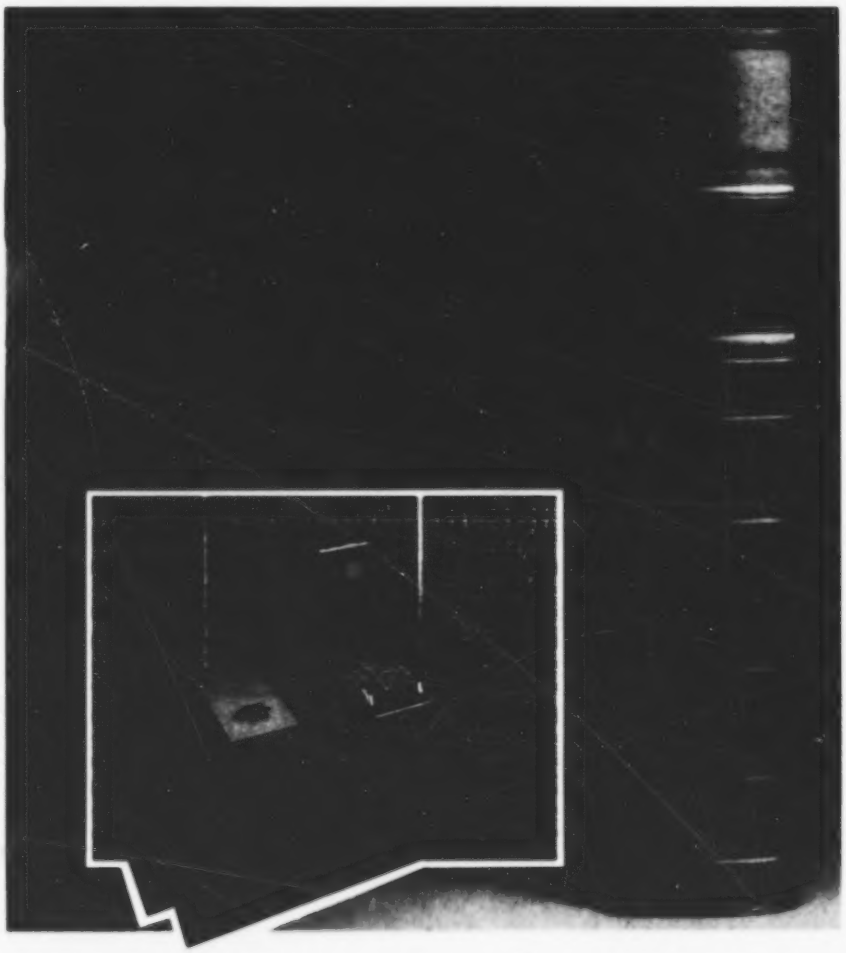
VERALEX Interactive Video Library makes teaching more effective and learning easier. It provides an opportunity to apply what has been learned in the classroom by allowing the student to participate in a robbery case...in a fraud case ...in a DWI case...in a personal injury case ...in a contract negotiation...or in one of many other simulations now available on interactive videodisc lessons.

In the trial skills lessons, the student assumes the role of counsel and, using a computer keyboard, may interrupt the proceedings at any time to object. When the judge asks counsel to cite grounds for the objection, the student answers, the judge rules, and the video trial resumes. (The computer can also show all of the objectionable questions that were overlooked.) The immediacy makes it engaging; thus, lastingly instructive.

For more information, or to arrange a demonstration, call Larry Garrett at 716-546-5006, or write to VERACORP, Inc., Department of Professional Education, P.O. Box 92824, Rochester, NY 14692.

VERACORP Inc.
the electronic affiliate of

THE LAWYERS CO-OPERATIVE PUBLISHING CO
Rochester, New York 14694
BANCROFT-WHITNEY CO.
San Francisco, California 94105



A Practical Solution to a Crowded Library

Save Shelf Space with West's® Ultra Fiche

Free up existing shelf space . . . and cut your future space costs and requirements right now!

West's Ultra Fiche gives you convenient access to published volumes of the National Reporter System in an extraordinary space-saving format. The case law in 6,550 volumes of the National Reporter System® which is now available on Ultra Fiche can be stored in approximately 4 cubic feet.

Each Ultra Fiche corresponds to one bound volume from the National Reporter System.

To learn more about the space-saving advantages of Ultra Fiche Ed.,® contact your West representative today.

WEST PUBLISHING COMPANY
50 W. Kellogg Blvd.
P.O. Box 64526
St. Paul, MN 55164-0526

9245-8/87

© 1987 West Publishing Company